

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MILPITAS FINDING AN URGENT PUBLIC HEALTH AND SAFETY CONCERN EXISTS AT SPRING VALLEY HEIGHTS SUBDIVISION AND APPROVING TEMPORARY EXTENSION OF EMERGENCY WATER SUPPLY

RECITALS

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision located within the City of Milpitas but outside the Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities which has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, The City of Milpitas operates a water distribution system and can provide temporary water to the SPVH-MWC; and

WHEREAS, Resolution No. 6796 allows the City Council to approve any emergency water supply for a specified limited time period to areas outside the Urban Growth Boundary of the City when the following four criteria are met:

- An urgent public health or safety concern exists.
- An independent licensed professional engineer has concluded that this temporary emergency supply is the only economically justifiable solution.
- The site subdivision map was recorded prior to November 3, 1998.
- The Applicant is responsible for the proportionate share of service cost.

WHEREAS, The four criteria have been satisfied as follows:

- The SPVH-MWC reservoir water volume dropped below critical levels on September 10, 2002 and the well system was unable to provide replenishment of the water supply. The State Department of Health has determined that SPVH-MWC has a severe potable water shortage and that a critical health concern exists.
- An independent licensed professional engineer has concluded that this temporary emergency supply is necessary during the interim until a new water supply is installed.
- The Spring Valley Heights subdivision map was recorded prior to November 3, 1998.
- SPVH-MWC has agreed to purchase and transport the water from the City of Milpitas system.

WHEREAS, staff approved emergency water supply on an interim basis for SPVH-MWC beginning September 12, 2002; and

WHEREAS, Council approved Resolution No. 7223 allowing City water supply on an emergency basis for SPVH-MWC beginning September 12, 2002 until January 31, 2003; and

WHEREAS, Council approved Resolution No. 7270 allowing City water supply on an emergency basis for SPVH-MWC until December 31, 2003; and

WHEREAS, Council approved Resolution No. 7370 allowing City water supply on an emergency basis for SPVH-MWC until December 31, 2005; and

WHEREAS, SPVH-MWC is proceeding with the design of a permanent connection to the City water system.

NOW, THEREFORE, BE IT RESOLVED, The City Council of the City of Milpitas finds that an urgent public health and safety concern continues to exist at Spring Valley Heights and approves an extension of emergency water supply to the SPVH-MWC in accordance with the following conditions:

1. This Resolution supercedes Resolution No. 7370.
2. This extension of emergency water supply is allowed until a permanent connection to the City water system is installed and operating, or until December 31, 2007, whichever is sooner.
3. SPVH-MWC shall submit water use meter readings the last week of every month and reimburse the City of Milpitas at the second residential tier rate (currently set at \$2.93 per hundred cubic feet) for all emergency water supply obtained from the City.
4. SPVH-MWC shall be responsible for coordination with City staff for water supply points of connection, time of day and rate of draw for filling tanker trucks to transport water, and for meeting Fire Department fire protection requirements.
5. SPVH-MWC shall be responsible for meeting all Department of Health Services requirements related to use of the temporary emergency water supply.

PASSED AND ADOPTED this 18th day of October, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mary Lavelle, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

Control No. _____

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, CA 95035

**AGREEMENT FOR THE PROVISION OF CITY POTABLE WATER SERVICE
(INCLUDING PROPERTY LOCATED OUTSIDE THE CITY LIMITS)**

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Spring Valley Heights Association, hereinafter referred to as "ASSOCIATION."

WHEREAS, ASSOCIATION is a homeowners' association made up of the owners of the 25 lots in the Spring Valley Heights subdivision within the City of Milpitas, which owners are referred to herein as "the Members"; and

WHEREAS, the 25 lots of the Spring Valley Heights Subdivision plus one additional lot together make up the Spring Valley Heights Community (Community); and

WHEREAS, the existing private water system that serves the Community is operated by the Spring Valley Heights Mutual Water Company ("the Company"); and

WHEREAS, the Company's existing groundwater supply has diminished and is now inadequate to provide for health and safety needs of the Community; and

WHEREAS, the Company is receiving temporary emergency water supply from the CITY'S municipal water supply for the Community; and

WHEREAS, the State of California Department of Health Services has evaluated the Company's existing groundwater supply and instructed the Company to develop a new water source or supply; and

WHEREAS, the Company developed a new well and determined that it was of inadequate quantity and quality for potable water purposes; and

WHEREAS, ASSOCIATION desires a permanent connection to the CITY'S municipal water supply to serve the Community; and

WHEREAS, CITY finds that adequate utility capacity exists to provide such service within its San Francisco Public Utility Commission water supply service area; and

WHEREAS, the San Francisco Public Utility Commission has approved use of this water contingent upon ASSOCIATION, rather than the Company, supplying water to the lots within the Community in order to comply with the provisions in the Raker Act, which prohibit supplying water to private companies for resale; and

WHEREAS, ASSOCIATION is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to provide retail water service to the Community through a master meter.

NOW, THEREFORE, in consideration of the promises herein and for further good and valuable consideration hereinafter set forth, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. Subject Property. The properties to be served by water supplied to the ASSOCIATION by the City shall be solely those properties described on Exhibit A which is attached hereto and incorporated herein by this reference.

SECTION 2. Conditions for Receipt of Water Service. ASSOCIATION may provide potable water service to the properties described in Exhibit A provided that ASSOCIATION and its Community shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, ASSOCIATION agrees to disconnect or otherwise discontinue providing water service to a property for the failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. ASSOCIATION shall prepare plans and specifications for installation of an extension of the City's existing potable water system that terminates at master water meter ("the Master Meter") through which water will be provided to the Members, which plans shall be subject to approval of the City. The Water System Extension may include piping, pumps, pump stations, controls, emergency generators, programmable logic controller, and other necessary appurtenances. ASSOCIATION shall install potable water mains in the public street or in an existing public service easement to the public potable water system connection point shown as Segment A on Exhibit B, all subject to approval by the City and in accordance with the then-existing CITY standards.

SECTION 4. Costs. The ASSOCIATION shall pay the following costs as set forth below:

A. The ASSOCIATION shall pay all costs to the City associated with the Water System Extension. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Extension. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private Job (PJ) cost reimbursement process. The ASSOCIATION has provided an initial deposit in the amount of \$5,000 on August 1, 2003 and subsequent payments to maintain their PJ balance. The ASSOCIATION agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to the ASSOCIATION.

B. Upon completion of the physical connection of the public potable water system to the Master Meter and prior to the commencement of water service, the ASSOCIATION shall make a lump-sum payment equal to the City's then-current water connection fee for each

structure connecting to the system. Upon the proposed connection of additional structures to the system and prior to the issuance of building permits for said structures, the individual property owners shall pay a fee equal to the amount of the then-current connection fee. The ASSOCIATION acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

C. The ASSOCIATION shall pay the City's costs of operating and maintaining the Public Water System Extension (Segment A on Exhibit B map) and Master Meter including labor, pipeline and equipment replacement, and routine material consumed during operation of the system. Such cost shall be set at an annual fixed rate of \$18,100. The ASSOCIATION shall pay the annual fixed maintenance and operations cost invoice within 30 days of the date of the invoice. A sample calculation of operating and maintenance costs is shown in Exhibit C.

D. The ASSOCIATION shall pay to the City water meter and water quantity charges on the City's standard billing cycle based on the water supplied to the Master Meter and as required by the City's then-current water rates, whether adopted by ordinance, resolution, or otherwise.

E. In addition, the ASSOCIATION shall, on request by CITY, reimburse CITY for any other reasonable costs that are a direct or indirect result of the Water System Extension to the extent such costs are not otherwise covered herein.

Unless otherwise set forth herein, all fees and charges described above will be due and payable at the time said fees are usually and customarily collected by CITY under its rules and regulations respecting such fees and charges.

SECTION 5. ASSOCIATION shall be responsible for all acquisition of any necessary right-of-way for the Public Water System Extension (Segment A), prepare necessary environmental documents, implement improved mitigation measures, and construct the Water System Extension in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction. The ASSOCIATION shall cause the designer of the Public Water System Extension to develop and provide to the City prior to the City's acceptance an operation and maintenance manual.

SECTION 6. ASSOCIATION shall dedicate all newly constructed public potable water supply facilities (up to the Master Meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (up to, and including, the Master Meter) installed by ASSOCIATION that have been inspected and approved by CITY after the system is dedicated to the CITY.

SECTION 8. Further, CITY shall not be liable in any way for damages to ASSOCIATION or ASSOCIATION's property resulting from acts of God or any other act or acts beyond the control of CITY which may in any way cause interruption or discontinuance of the potable water service(s) provided hereunder.

SECTION 9. The ASSOCIATION is responsible for acquisition of any necessary right-of-way for the private portion of the potable water distribution system. An encroachment permit

Agreement (entering upon public right of way) from the City of Milpitas is required for Segment B (see Exhibit D). An easement from the County of Santa Clara is required for Segment C. There is a separate agreement being developed for segment C between the County of Santa Clara and the ASSOCIATION, which includes a trail easement and is not part of this AGREEMENT. Segment D is within the ASSOCIATION right of way and does not require any other party approval for right of way.

SECTION 10. ASSOCIATION expressly agrees that all maintenance of the private potable water distribution system, shown as Segments B, C and D on Exhibit B, after the Master Meter shall be the responsibility of ASSOCIATION and the Members. ASSOCIATION shall keep the potable water distribution system under its ownership in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies. These three segments (B, C and D) shall be subject to the requirements of Public Works Engineering Division and/or Building Inspection Division. Prior to the commencement of construction of these segments, ASSOCIATION shall provide City with detailed drawings reflecting the extent, configuration and alignment.

SECTION 11. Under an Agreement between CITY and the County of Santa Clara (hereinafter, "COUNTY") entitled "Agreement for Sale of Waterline Easement to City of Milpitas- Ed R. Levin County Park", ("the COUNTY Agreement") City will obtain rights to a waterline easement for Segment A of the proposed water transmission line. As part of the COUNTY Agreement, CITY will assume various obligations and pledges to fulfill conditions with respect to Santa Clara County. ASSOCIATION hereby assumes responsibility and for the fulfillment of the following obligations to be outlined in the County Agreement:

- A. Performance Bond. ASSOCIATION shall secure a performance bond for completion of the waterline improvements and restoration of COUNTY lands equal to 100% of CITY'S project construction costs to insure the total project completion, including design, permitting, construction and construction management of the Segment A Easement Improvements. Such bond shall include both the COUNTY and CITY as beneficiaries on the performance bond.
- B. Environmental Compliance and Indemnification. ASSOCIATION agrees to indemnify and hold harmless COUNTY, its governing board, officers, employees and agents, against any and all liability, including third party conduct except for COUNTY'S conduct, arising out of the presence, use, generation, storage, release or disposal of hazardous materials on the areas contained within the Easement Improvements because of CITY'S construction. ASSOCIATION further agrees to indemnify and hold harmless CITY and City's elected and appointed officials, employees, agents and contractors ("City Indemnitees"), against any and all liability, including third party conduct except for CITY'S conduct, arising out of the presence, use, generation, storage, release or disposal of hazardous materials on the areas contained within the Easement Improvements because of CITY'S construction. Such indemnity shall include:

- a. All foreseeable and unforeseeable consequential damages arising out of such presence, use generation, storage, release or disposal of hazardous materials;
 - b. The cost of any required or necessary repair, cleanup, remediation, or decontamination and the preparation of any site mitigation closure or other required plans arising out of such presence, use, generation, storage, release or disposal of hazardous materials.
- C. Definition of Hazardous Materials. "Hazardous Materials" shall include, but not be limited to, flammable explosives, radioactive materials, hazardous wastes, toxic substances and related materials, and substances defined as "hazardous substances" or "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.
- D. Additional Indemnification of CITY. Association additionally agrees to indemnify and hold harmless CITY Indemnitees from and against all claims, demands, liabilities, judgments, losses, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or related to CITY'S provision of potable water service to the properties described in Exhibit "A" except to the extent the same are attributable to the gross negligence or willful misconduct of CITY or CITY'S Indemnitees. It is the intent of the Parties that CITY shall have no liability for claims arising in connection with the use of the Segment A Easement Area or the improvements erected thereon other than as expressly stated in this Section.

SECTION 12. Association shall provide record drawings of pipeline segments A, B, C and D to the City prior to acceptance of the pipeline.

SECTION 13. Upon ASSOCIATION's breach of or failure to timely perform any of the terms of this Agreement, this Agreement may be terminated at CITY's sole option, and CITY may discontinue service.

SECTION 14. ASSOCIATION further agrees that its on-site distribution system shall only serve the parcels described in Exhibit "A," and does not extend to any additional subdivision of said property.

SECTION 15. Underground Service Alert Membership. ASSOCIATION shall become a member of the underground service alert and remain an active member for perpetuity of the encroachment. ASSOCIATION shall be responsible for all subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its

underground facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

SECTION 16. Prior to any construction of waterline transmission improvements in Segment B, ASSOCIATION shall execute and record at the office of the County Clerk an Encroachment Permit Agreement substantially in the form of Exhibit D, attached.

SECTION 17. This Agreement shall be binding upon the successors, heirs, or assigns of ASSOCIATION.

SECTION 18. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at ASSOCIATION's cost and expense, and that the provisions contained herein relative to the real property described in Exhibit "A" shall operate as covenants and restrictions thereon.

SECTION 19. This Agreement shall become null and void and without any further force or effect if the CITY and COUNTY are unable to reach agreement for utility easements for Segment A.

SECTION 20. Entire Agreement: This constitutes the entire agreement between the parties and this agreement may be modified only by a written document signed and dated by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

CITY OF MILPITAS, a municipal corporation ASSOCIATION:

Jose S. Esteves, Mayor

Dated: _____, 20__

Dated: _____, 20__

ATTEST:

Mary Lavelle, City Clerk

APPROVED AS TO FORM:

Steve Mattas, City Attorney

Exhibit A: Properties governed by this Agreement
Exhibit B: Spring Valley Heights Water Supply Transmission Line
Exhibit C: Sample Calculation for Operating and Maintenance Costs
Exhibit D: Encroachment Permit Agreement for Segment B

Exhibit A Properties governed by this Agreement

APN 42-30-026	3547 Vista Norte Court
APN 42-30-027	2553 Vista Norte Court
APN 42-30-028	3561 Vista Norte Court
APN 42-30-004	3545 Vista Norte Court
APN 42-30-005	3550 Vista Norte Court
APN 42-30-025	350 Vista Ridge Drive
APN 42-30-006	375 Vista Ridge Drive
APN 42-30-029	531 Vista Ridge Drive
APN 42-30-015	529 Vista Ridge Drive
APN 42-30-14	527 Vista Ridge Drive
APN 42-30-013	525 Vista Ridge Drive
APN 42-30-012	523 Vista Ridge Drive
APN 42-30-008	489 Vista Ridge Drive
APN 42-30-011	521 Vista Ridge Drive
APN 42-30-010	519 Vista Ridge Drive
APN 42-30-009	517 Vista Ridge Drive
APN 42-30-007	461 Vista Ridge Drive
APN 42-30-017	510 Vista Spring Court
APN 42-30-018	514 Vista Spring Court
APN 42-30-019	518 Vista Spring Court
APN 42-30-021	500 Vista Spring Court
APN 42-30-024	410 Vista Ridge Drive
APN 42-30-022	490 Vista Ridge Drive
APN 42-30-023	422 Vista Ridge Drive
APN 42-30-020	524 Vista Ridge Drive
APN 42-31-002	548 Vista Ridge Drive and 550 Vista Ridge Drive (COUNTY PARCEL)

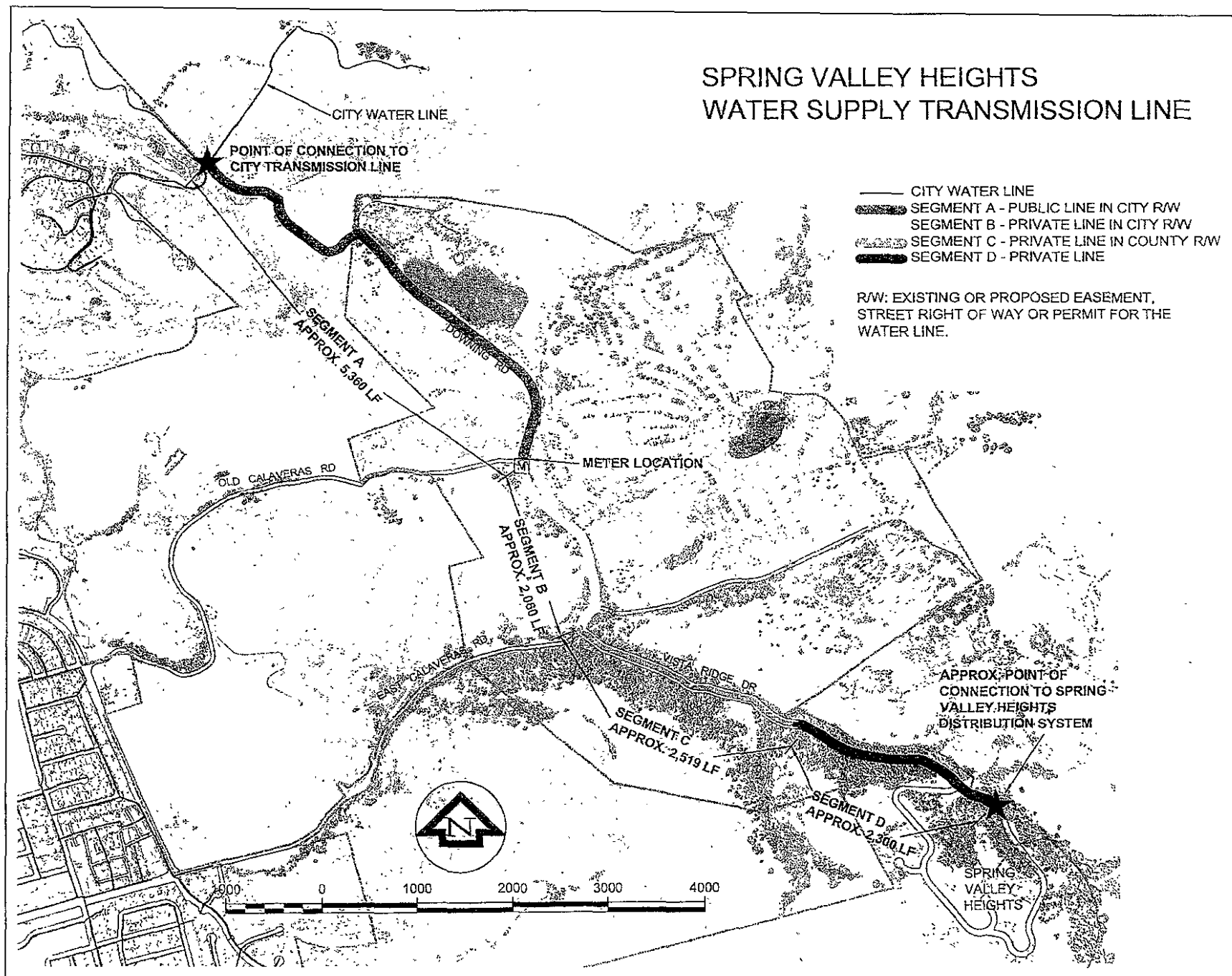


Exhibit C

Water Fee Schedule

Assumptions for assessing Spring Valley Heights water fees for two different pipe materials are shown below for the public water line (Segment A). Water fees were evaluated over 100 years and broken down into two components: Operation & Maintenance (O&M) costs and capital replacement costs.

Assumptions:

- **8" Ductile Iron Pipe**
 - Construction Cost = \$653,000 (5,360 linear feet, fire hydrants, and valves per Preston Pipeline budgetary estimates)
 - Useful Life of Pipe = 100 Years (based on 2002 City of Milpitas Utility Depreciation Study by Schaaf & Wheeler)
- **8" PVC C900 Pipe**
 - Construction Cost = \$457,000 (5,360 linear feet, fire hydrants, and valves per Preston Pipeline budgetary estimates)
 - Useful Life of Pipe = 70 Years (based on 2002 City of Milpitas Utility Depreciation Study by Schaaf & Wheeler)
- Annual O&M = 1% of Construction Cost
- Value of money at 3% interest
- 1.8% Inflation (based on historical San Francisco Engineering New Record increase from 9/93-6516.67 to 9/03-7801.95)
- Estimated Annual Water Use (at Buildout) = 12 Million Gallons (based on 7/3/03 email from Bob Scott of the Spring Valley Homeowners Association)*

Calculations to determine costs needed to cover annual O&M for the useful life of the pipe are shown in Exhibits 1 and 2 for the two different pipe materials.

Equivalent Annual Payments

Spring Valley would make annual lump sum payments to pay for O&M and replacement cost of the public portion of the water line. The Home Owners Association would be responsible for annual payments to the City. Payments would be placed into the water fund, and the water fund would pay for the O&M and capital replacement. Based on this evaluation, these annual payments will provide adequate funding for both O&M costs and for future line replacement costs.

Equivalent Annual Payments	O&M Costs	Capital Replacement Costs	TOTAL
8" Ductile Iron Pipe	\$12,100	\$6,400	\$18,500
8" PVC C900 Pipe	\$8,500	\$9,600	\$18,100

* Currently there are 16 occupied parcels. At buildout, 26 occupied parcels are anticipated

EXHIBIT C-1

8" Ductile Iron Pipe - Equivalent Annual Payments

O&M Costs:

➤ 100 year O&M Present Worth by applying an annual 1.8% inflation at 3% interest.

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
1	\$6,530.00	\$117.54	\$6,647.54		\$6,453.92
2	\$6,647.54	\$119.66	\$6,767.20		\$6,378.73
3	\$6,767.20	\$121.81	\$6,889.01		\$6,304.42
4	\$6,889.01	\$124.00	\$7,013.01		\$6,230.97
5	\$7,013.01	\$126.23	\$7,139.24		\$6,158.37
6	\$7,139.24	\$128.51	\$7,267.75		\$6,086.62
7	\$7,267.75	\$130.82	\$7,398.57		\$6,015.71
8	\$7,398.57	\$133.17	\$7,531.74		\$5,945.63
9	\$7,531.74	\$135.57	\$7,667.31		\$5,876.36
10	\$7,667.31	\$138.01	\$7,805.32		\$5,807.89
11	\$7,805.32	\$140.50	\$7,945.82		\$5,740.23
12	\$7,945.82	\$143.02	\$8,088.85		\$5,673.35
13	\$8,088.85	\$145.60	\$8,234.44		\$5,607.26
14	\$8,234.44	\$148.22	\$8,382.66		\$5,541.93
15	\$8,382.66	\$150.89	\$8,533.55		\$5,477.36
16	\$8,533.55	\$153.60	\$8,687.16		\$5,413.55
17	\$8,687.16	\$156.37	\$8,843.52		\$5,350.48
18	\$8,843.52	\$159.18	\$9,002.71		\$5,288.14
19	\$9,002.71	\$162.05	\$9,164.76		\$5,226.53
20	\$9,164.76	\$164.97	\$9,329.72		\$5,165.64
21	\$9,329.72	\$167.94	\$9,497.66		\$5,105.46
22	\$9,497.66	\$170.96	\$9,668.62		\$5,045.98
23	\$9,668.62	\$174.04	\$9,842.65		\$4,987.19
24	\$9,842.65	\$177.17	\$10,019.82		\$4,929.09
25	\$10,019.82	\$180.36	\$10,200.18		\$4,871.66
26	\$10,200.18	\$183.60	\$10,383.78		\$4,814.90
27	\$10,383.78	\$186.91	\$10,570.69		\$4,758.81
28	\$10,570.69	\$190.27	\$10,760.96		\$4,703.36
29	\$10,760.96	\$193.70	\$10,954.66		\$4,648.57
30	\$10,954.66	\$197.18	\$11,151.84		\$4,594.41
31	\$11,151.84	\$200.73	\$11,352.57		\$4,540.88
32	\$11,352.57	\$204.35	\$11,556.92		\$4,487.98
33	\$11,556.92	\$208.02	\$11,764.94		\$4,435.69
34	\$11,764.94	\$211.77	\$11,976.71		\$4,384.01
35	\$11,976.71	\$215.58	\$12,192.29		\$4,332.94
36	\$12,192.29	\$219.46	\$12,411.75		\$4,282.46
37	\$12,411.75	\$223.41	\$12,635.17		\$4,232.57
38	\$12,635.17	\$227.43	\$12,862.60		\$4,183.25
39	\$12,862.60	\$231.53	\$13,094.13		\$4,134.52
40	\$13,094.13	\$235.69	\$13,329.82		\$4,086.35
41	\$13,329.82	\$239.94	\$13,569.76		\$4,038.74

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
42	\$13,569.76	\$244.26	\$13,814.01		\$3,991.69
43	\$13,814.01	\$248.65	\$14,062.67		\$3,945.18
44	\$14,062.67	\$253.13	\$14,315.79		\$3,899.22
45	\$14,315.79	\$257.68	\$14,573.48		\$3,853.79
46	\$14,573.48	\$262.32	\$14,835.80		\$3,808.89
47	\$14,835.80	\$267.04	\$15,102.84		\$3,764.52
48	\$15,102.84	\$271.85	\$15,374.70		\$3,720.66
49	\$15,374.70	\$276.74	\$15,651.44		\$3,677.31
50	\$15,651.44	\$281.73	\$15,933.17		\$3,634.47
51	\$15,933.17	\$286.80	\$16,219.96		\$3,592.12
52	\$16,219.96	\$291.96	\$16,511.92		\$3,550.27
53	\$16,511.92	\$297.21	\$16,809.14		\$3,508.91
54	\$16,809.14	\$302.56	\$17,111.70		\$3,468.03
55	\$17,111.70	\$308.01	\$17,419.71		\$3,427.63
56	\$17,419.71	\$313.55	\$17,733.27		\$3,387.69
57	\$17,733.27	\$319.20	\$18,052.47		\$3,348.23
58	\$18,052.47	\$324.94	\$18,377.41		\$3,309.22
59	\$18,377.41	\$330.79	\$18,708.20		\$3,270.66
60	\$18,708.20	\$336.75	\$19,044.95		\$3,232.56
61	\$19,044.95	\$342.81	\$19,387.76		\$3,194.90
62	\$19,387.76	\$348.98	\$19,736.74		\$3,157.68
63	\$19,736.74	\$355.26	\$20,092.00		\$3,120.89
64	\$20,092.00	\$361.66	\$20,453.66		\$3,084.53
65	\$20,453.66	\$368.17	\$20,821.82		\$3,048.59
66	\$20,821.82	\$374.79	\$21,196.62		\$3,013.07
67	\$21,196.62	\$381.54	\$21,578.15		\$2,977.97
68	\$21,578.15	\$388.41	\$21,966.56		\$2,943.27
69	\$21,966.56	\$395.40	\$22,361.96		\$2,908.98
70	\$22,361.96	\$402.52	\$22,764.48		\$2,875.09
71	\$22,764.48	\$409.76	\$23,174.24		\$2,841.60
72	\$23,174.24	\$417.14	\$23,591.37		\$2,808.49
73	\$23,591.37	\$424.64	\$24,016.02		\$2,775.77
74	\$24,016.02	\$432.29	\$24,448.30		\$2,743.43
75	\$24,448.30	\$440.07	\$24,888.37		\$2,711.47
76	\$24,888.37	\$447.99	\$25,336.37		\$2,679.88
77	\$25,336.37	\$456.05	\$25,792.42		\$2,648.66
78	\$25,792.42	\$464.26	\$26,256.68		\$2,617.80
79	\$26,256.68	\$472.62	\$26,729.30		\$2,587.30
80	\$26,729.30	\$481.13	\$27,210.43		\$2,557.16
81	\$27,210.43	\$489.79	\$27,700.22		\$2,527.37
82	\$27,700.22	\$498.60	\$28,198.82		\$2,497.92
83	\$28,198.82	\$507.58	\$28,706.40		\$2,468.82
84	\$28,706.40	\$516.72	\$29,223.12		\$2,440.06
85	\$29,223.12	\$526.02	\$29,749.13		\$2,411.63
86	\$29,749.13	\$535.48	\$30,284.62		\$2,383.53
87	\$30,284.62	\$545.12	\$30,829.74		\$2,355.76
88	\$30,829.74	\$554.94	\$31,384.68		\$2,328.32
89	\$31,384.68	\$564.92	\$31,949.60		\$2,301.19
90	\$31,949.60	\$575.09	\$32,524.69		\$2,274.38

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
91	\$32,524.69	\$585.44	\$33,110.14		\$2,247.88
92	\$33,110.14	\$595.98	\$33,706.12		\$2,221.69
93	\$33,706.12	\$606.71	\$34,312.83		\$2,195.81
94	\$34,312.83	\$617.63	\$34,930.46		\$2,170.23
95	\$34,930.46	\$628.75	\$35,559.21		\$2,144.94
96	\$35,559.21	\$640.07	\$36,199.27		\$2,119.95
97	\$36,199.27	\$651.59	\$36,850.86		\$2,095.25
98	\$36,850.86	\$663.32	\$37,514.18		\$2,070.84
99	\$37,514.18	\$675.26	\$38,189.43		\$2,046.72
100	\$38,189.43	\$687.41	\$38,876.84		\$2,022.87
					\$382,354.65

$P = \text{O\&M carried forward } (1+i)^n$ so, after applying for each of the 100 years
 $P = \$382,355$

- Calculated Annual Cost by applying 3% to 100 year O&M Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$382,355 [(0.03 (1+0.03)^{100}) / ((1+0.03)^{100} - 1)] = \$12,113$$

Capital Replacement Costs:

- 100 year Future Worth by applying 1.8% inflation to \$653,659

$$F = P (1+i)^n = \$653,659 (1+0.018)^{100} = \$3,891,608$$

- Calculated Annual Cost by applying 3% to 100 year Future Worth

$$A = F [i / ((1+i)^n - 1)] = \$3,891,608 [0.03 / ((1+0.03)^{100} - 1)] = \$6,408$$

TOTAL Costs (O&M and Capital Replacement):

- Equivalent Annual Costs

$$A = \$12,113 + \$6,408 = \mathbf{\$18,500}$$

EXHIBIT C-2

8" PVC C900 Pipe - Equivalent Annual Payments

O&M Costs:

➤ 70 year O&M Present Worth by applying an annual 1.8% inflation at 3% interest.

Year	O&M	1.8% Inflation	O&M Future Worth		O&M Present Worth (3% interest)
1	\$4,570.00	\$82.26	\$4,652.26		\$4,516.76
2	\$4,652.26	\$83.74	\$4,736.00		\$4,464.13
3	\$4,736.00	\$85.25	\$4,821.25		\$4,412.13
4	\$4,821.25	\$86.78	\$4,908.03		\$4,360.72
5	\$4,908.03	\$88.34	\$4,996.38		\$4,309.92
6	\$4,996.38	\$89.93	\$5,086.31		\$4,259.70
7	\$5,086.31	\$91.55	\$5,177.86		\$4,210.08
8	\$5,177.86	\$93.20	\$5,271.07		\$4,161.03
9	\$5,271.07	\$94.88	\$5,365.94		\$4,112.55
10	\$5,365.94	\$96.59	\$5,462.53		\$4,064.64
11	\$5,462.53	\$98.33	\$5,560.86		\$4,017.28
12	\$5,560.86	\$100.10	\$5,660.95		\$3,970.48
13	\$5,660.95	\$101.90	\$5,762.85		\$3,924.22
14	\$5,762.85	\$103.73	\$5,866.58		\$3,878.50
15	\$5,866.58	\$105.60	\$5,972.18		\$3,833.31
16	\$5,972.18	\$107.50	\$6,079.68		\$3,788.65
17	\$6,079.68	\$109.43	\$6,189.11		\$3,744.52
18	\$6,189.11	\$111.40	\$6,300.52		\$3,700.89
19	\$6,300.52	\$113.41	\$6,413.93		\$3,657.77
20	\$6,413.93	\$115.45	\$6,529.38		\$3,615.16
21	\$6,529.38	\$117.53	\$6,646.91		\$3,573.04
22	\$6,646.91	\$119.64	\$6,766.55		\$3,531.41
23	\$6,766.55	\$121.80	\$6,888.35		\$3,490.27
24	\$6,888.35	\$123.99	\$7,012.34		\$3,449.61
25	\$7,012.34	\$126.22	\$7,138.56		\$3,409.42
26	\$7,138.56	\$128.49	\$7,267.05		\$3,369.69
27	\$7,267.05	\$130.81	\$7,397.86		\$3,330.44
28	\$7,397.86	\$133.16	\$7,531.02		\$3,291.64
29	\$7,531.02	\$135.56	\$7,666.58		\$3,253.29
30	\$7,666.58	\$138.00	\$7,804.58		\$3,215.38
31	\$7,804.58	\$140.48	\$7,945.06		\$3,177.92
32	\$7,945.06	\$143.01	\$8,088.07		\$3,140.90
33	\$8,088.07	\$145.59	\$8,233.66		\$3,104.31
34	\$8,233.66	\$148.21	\$8,381.86		\$3,068.14
35	\$8,381.86	\$150.87	\$8,532.74		\$3,032.39
36	\$8,532.74	\$153.59	\$8,686.33		\$2,997.06
37	\$8,686.33	\$156.35	\$8,842.68		\$2,962.15
38	\$8,842.68	\$159.17	\$9,001.85		\$2,927.64
39	\$9,001.85	\$162.03	\$9,163.88		\$2,893.53
40	\$9,163.88	\$164.95	\$9,328.83		\$2,859.82
41	\$9,328.83	\$167.92	\$9,496.75		\$2,826.50
42	\$9,496.75	\$170.94	\$9,667.69		\$2,793.57
43	\$9,667.69	\$174.02	\$9,841.71		\$2,761.02
44	\$9,841.71	\$177.15	\$10,018.86		\$2,728.86

Year	O&M	1.8% Inflation	O&M Future Worth		O&M Present Worth (3% interest)
45	\$10,018.86	\$180.34	\$10,199.20		\$2,697.06
46	\$10,199.20	\$183.59	\$10,382.79		\$2,665.64
47	\$10,382.79	\$186.89	\$10,569.68		\$2,634.58
48	\$10,569.68	\$190.25	\$10,759.93		\$2,603.89
49	\$10,759.93	\$193.68	\$10,953.61		\$2,573.55
50	\$10,953.61	\$197.17	\$11,150.78		\$2,543.57
51	\$11,150.78	\$200.71	\$11,351.49		\$2,513.94
52	\$11,351.49	\$204.33	\$11,555.82		\$2,484.65
53	\$11,555.82	\$208.00	\$11,763.82		\$2,455.70
54	\$11,763.82	\$211.75	\$11,975.57		\$2,427.09
55	\$11,975.57	\$215.56	\$12,191.13		\$2,398.81
56	\$12,191.13	\$219.44	\$12,410.57		\$2,370.87
57	\$12,410.57	\$223.39	\$12,633.96		\$2,343.25
58	\$12,633.96	\$227.41	\$12,861.37		\$2,315.95
59	\$12,861.37	\$231.50	\$13,092.88		\$2,288.96
60	\$13,092.88	\$235.67	\$13,328.55		\$2,262.30
61	\$13,328.55	\$239.91	\$13,568.46		\$2,235.94
62	\$13,568.46	\$244.23	\$13,812.70		\$2,209.89
63	\$13,812.70	\$248.63	\$14,061.32		\$2,184.14
64	\$14,061.32	\$253.10	\$14,314.43		\$2,158.70
65	\$14,314.43	\$257.66	\$14,572.09		\$2,133.55
66	\$14,572.09	\$262.30	\$14,834.39		\$2,108.69
67	\$14,834.39	\$267.02	\$15,101.40		\$2,084.12
68	\$15,101.40	\$271.83	\$15,373.23		\$2,059.84
69	\$15,373.23	\$276.72	\$15,649.95		\$2,035.84
70	\$15,649.95	\$281.70	\$15,931.65		\$2,012.12
71	\$15,931.65	\$286.77	\$16,218.42		\$1,988.68
72	\$16,218.42	\$291.93	\$16,510.35		\$1,965.51
73	\$16,510.35	\$297.19	\$16,807.53		\$1,942.61
74	\$16,807.53	\$302.54	\$17,110.07		\$1,919.98
75	\$17,110.07	\$307.98	\$17,418.05		\$1,897.61
76	\$17,418.05	\$313.52	\$17,731.58		\$1,875.51
77	\$17,731.58	\$319.17	\$18,050.74		\$1,853.65
78	\$18,050.74	\$324.91	\$18,375.66		\$1,832.06
79	\$18,375.66	\$330.76	\$18,706.42		\$1,810.71
80	\$18,706.42	\$336.72	\$19,043.13		\$1,789.62
81	\$19,043.13	\$342.78	\$19,385.91		\$1,768.77
82	\$19,385.91	\$348.95	\$19,734.86		\$1,748.16
83	\$19,734.86	\$355.23	\$20,090.08		\$1,727.79
84	\$20,090.08	\$361.62	\$20,451.71		\$1,707.66
85	\$20,451.71	\$368.13	\$20,819.84		\$1,687.77
86	\$20,819.84	\$374.76	\$21,194.59		\$1,668.11
87	\$21,194.59	\$381.50	\$21,576.10		\$1,648.67
88	\$21,576.10	\$388.37	\$21,964.47		\$1,629.46
89	\$21,964.47	\$395.36	\$22,359.83		\$1,610.48
90	\$22,359.83	\$402.48	\$22,762.30		\$1,591.72
91	\$22,762.30	\$409.72	\$23,172.03		\$1,573.17
92	\$23,172.03	\$417.10	\$23,589.12		\$1,554.85
93	\$23,589.12	\$424.60	\$24,013.73		\$1,536.73
94	\$24,013.73	\$432.25	\$24,445.97		\$1,518.83
95	\$24,445.97	\$440.03	\$24,886.00		\$1,501.13
96	\$24,886.00	\$447.95	\$25,333.95		\$1,483.64

Year	O&M	1.8% Inflation	O&M Future Worth		O&M Present Worth (3% interest)
97	\$25,333.95	\$456.01	\$25,789.96		\$1,466.36
98	\$25,789.96	\$464.22	\$26,254.18		\$1,449.27
99	\$26,254.18	\$472.58	\$26,726.75		\$1,432.39
100	\$26,726.75	\$481.08	\$27,207.84		\$1,415.70
					\$267,589.70

$P = \text{O\&M carried forward } (1+i)^n$ so, after applying for each of the 100 years
 $P = \$267,590$

- Calculated Annual Cost by applying 3% to 100 year O&M Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$267,590 [(0.03 (1+0.03)^{100}) / ((1+0.03)^{100} - 1)] = \$8,479$$

Capital Replacement Costs:

- **For 1st 70 years**

- 70 year Future Worth by applying 1.8% inflation to \$457,561

$$F = P (1+i)^n = \$457,561 (1+0.018)^{70} = \$1,595,120$$

- Present Worth by applying 3% inflation to Future Worth

$$P = F (1+i)^{-n} = \$1,595,120 (1+0.03)^{-70} = \$201,459$$

- Annual Cost by applying 3% to Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$201,459 [(0.03 (1+0.03)^{70}) / ((1+0.03)^{70} - 1)] = \$6,917$$

- **For 2nd 70 years**

- 140 year Future Worth by applying 1.8% inflation to \$457,561

$$F = P (1+i)^n = \$457,561 (1+0.018)^{140} = \$5,560,808$$

- Present Worth by applying 3% inflation to Future Worth

$$P = F (1+i)^{-n} = \$5,560,808 (1+0.03)^{-140} = \$88,701$$

- Annual Cost by applying 3% to Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$88,701 [(0.03 (1+0.03)^{140}) / ((1+0.03)^{140} - 1)] = \$2,704$$

- **Total Capital Replacement Costs**

- Annual Cost

$$A = \$6,917 + \$2,704 = \$9,621$$

TOTAL Costs (O&M and Capital Replacement):

➤ Equivalent Annual Costs

$$A = \$8,479 + \$9,621 = \mathbf{\$18,100}$$

Exhibit D
Encroachment Permit Agreement for Segment B

Control No.

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, Ca 95035

Record without fee under Section
6103-Government Code, State of
California

Encroachment Permit Agreement Upon
Public Right of Way

This authorization ("Permit") is entered into between The City of Milpitas, a municipal corporation ("the City") and Spring Valley Heights Homeowner's Association__ ("Permittee").

RECITALS

- A. Permittee has requested permission from the City to enter upon, utilize, construct improvements within and adjacent to certain right of way, described as follows ("Encroachment Area"): to install a water system within portion of Downing Road and Calaveras Road (Segment B as shown on Exhibit B of Agreement for the provisions of City potable water service).
- B. Permittee's utilization of the Encroachment Area will be undertaken for the benefit of the Permittee as shown on Exhibit A of the Agreement for the Provisions of City Potable Water Service (Agreement). The pipeline alignment is shown in Exhibit B of said agreement.
- C. Permittee desires to enter upon the Encroachment Area in order to construct and install those improvements ("the Improvements") described as follows: water system improvements on Downing Road and Calaveras Road (Segment B as shown on Exhibit B of Agreement).
- D. The purpose of this Permit is to document the City's authorization of such Encroachment and describe the terms and conditions governing such Encroachment.

The parties therefore agree as follows:

1. City's Title: By acceptance of the benefits hereunder, Permittee acknowledges the City's title to and interest in the real property of which the Encroachment Area is a part and waives any right to contest the validity of such title or interest.
2. Existing Utilities: Installation of the improvements shall not interfere with existing utilities within the Encroachment Area. If such interference is unavoidable, Permittee will be solely responsible for obtaining permission from the providers of such utilities, coordinating its construction activities with such utility providers and satisfaction of any expenses resulting from such interference.
3. Maintenance, Removal or Relocation of Improvements: Permittee acknowledges that the Encroachment Area is or may be the site of future public improvements in that all rights of use as described herein may be terminated upon 90 days prior notice of termination by the City to the Permittee. Upon such termination, Permittee shall, within the time prescribed by the City, remove or relocate all improvements placed, constructed or maintained within the Encroachment Area by Permittee. If Permittee fails to comply with such termination notice within the time prescribed, the City may remove and destroy the improvements without reimbursement to Permittee, its successors and assigns, and the cost of such removal shall be paid by Permittee, its successors and assigns, to the City and shall constitute a debt owing to the city. So long as the permit remains in effect, Permittee shall be solely responsible for maintenance of the improvements.
4. Emergency Repairs. Permittee shall engage the services of a professional engineer to serve in an on-call capacity in the case of any emergency or damage to Permittee improvements. Such engineer shall also serve as the responsible operator and agent for compliance with respect to any Underground Services Alert, as outlined more fully in item 12, below. In the event of an emergency repair of City facilities in proximity to Permittee facilities, which repair may conflict with or threaten Permittee facilities, Permittee shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the Permittee representative, at the election of the City, may be undertaken by the City at Permittee's expense. In the event of a rupture, line break, or other disruption of water line operation, which disruption presents an immediate threat to public safety, should permittee representative not be immediately available to coordinate repair and response, City may, at its election, repair the disruption and recover full costs of repair from permittee. Should City not elect to perform such protective action, Permittee shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety.

5. Construction Standards. Construction of the improvements will conform in all respects to the standards and requirements of the City and will be subject to the City's normal inspection and approval procedures.

6. Indemnity/Hold Harmless. Permittee hereby agrees to defend, indemnify and hold harmless the City, its elected and appointed boards, officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of this Permit, whether due to acts or omissions of Permittee or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of Permittee. In the event of any such liability, claims or damages, Permittee will defend the City, its agents and employees, with counsel reasonably acceptable to the City. The parties acknowledge that this indemnity provision is a material inducement for the City to grant this authorization and that the City would not grant this authorization without these indemnity provisions.

7. Termination/Revocation. As set in paragraph 3 above, the City may terminate this Permit. Determination by the City Council of the City that Permittee, its successors or assigns, is in default hereunder may be cause for revocation of this permit. By acceptance hereof, Permittee waives any claim, loss, damage action against the City resulting from the termination or revocation of this Permit or removal of the improvements by the City as permitted herein.

8. Attorney's Fees. In the event of legal action between the parties with respect to this authorization, the party prevailing in such action will be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorney's fees and costs.

9. Compliance with other Conditions. Permittee acknowledges that the authorization contained herein is in addition to and not in lieu of any other permits, inspections or approvals which Permittee may need to obtain from the City, from other utility providers or property owners with respect to its construction of the improvements and that Permittee must comply with all additional conditions imposed by the City with respect to construction of the improvements.

10. Encroachment Authorization. Based upon the terms and provisions in this Agreement, the City hereby authorizes encroachment by Permittee upon the Encroachment Area.

11. Successors and Assigns. This authorization will bind and inure to the benefit of the parties, the respective heirs, successors and assigns. This authorization is intended to run with the benefited property as a covenant running with the land and the obligations of Permittee described herein will constitute continuing obligations of all persons or entities succeeding to Permittee's ownership interest in such benefited property.

12. Underground Service Alert Membership. Permittee shall become a member of the underground service alert and remain an active member for perpetuity of the encroachment. Permittee shall be responsible for all subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

Executed on this _____ day of _____, 200 _____, at Milpitas, California.

PERMITEE:

By: _____
print name:
print title:

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Date: _____ By: _____
Charles Lawson, Interim City Manager

Attest:

Mary Lavelle, City Clerk

Approved as to form:

Steven T. Mattas, City Attorney

Recommended by:

Greg Armendariz, City Engineer

763130-2

ALL PURPOSE ACKNOWLEDGMENT

State of California)
) s.s.
County of _____)

On _____, before me,
_____, personally appeared

_____,
_____ personally known to me;
_____ or proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove
invaluable to persons relying on the document.

Individual(s)
Corporate Officer(s) Titles _____ and _____
Partner(s) _____ Limited _____ General
Attorney-in-Fact
Trustee(s)
Guardian/Conservator
Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could
prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document _____
Number of pages: _____ Date of document: _____
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF MILPITAS FINDING AN URGENT PUBLIC HEALTH AND SAFETY CONCERN EXISTS AT SPRING VALLEY HEIGHTS SUBDIVISION AND APPROVING TEMPORARY EXTENSION OF EMERGENCY WATER SUPPLY

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision located within the City of Milpitas but outside the Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities which has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, The City of Milpitas operates a water distribution system and can provide temporary water to the SPVH-MWC; and

WHEREAS, Resolution No. 6796 allows the City Council to approve any emergency water supply for a specified limited time period to areas outside the Urban Growth Boundary of the City when the following four criteria are met:

- *An urgent public health or safety concern exists.*
- *An independent licensed professional engineer has concluded that this temporary emergency supply is the only economically justifiable solution.*
- *The site subdivision map was recorded prior to November 3, 1998.*
- *The Applicant is responsible for the proportionate share of service cost.*

WHEREAS, The four criteria have been satisfied as follows:

- The SPVH-MWC reservoir water volume dropped below critical levels on September 10, 2002 and the well system was unable to provide replenishment of the water supply. The State Department of Health has determined that SPVH-MWC has a severe potable water shortage and that a critical health concern exists.
- An independent licensed professional engineer has concluded that this temporary emergency supply is necessary during the interim until a new water supply is

installed.

- The Spring Valley Heights subdivision map was recorded prior to November 3, 1998.
- SPVH-MWC has agreed to purchase and transport the water from the City of Milpitas system.

WHEREAS, staff approved emergency water supply on an interim basis for SPVH-MWC beginning September 12, 2002; and

WHEREAS, Council approved Resolution No. 7223 allowing City water supply on an emergency basis for SPVH-MWC beginning September 12, 2002 until January 31, 2003; and

WHEREAS, Council approved Resolution No. 7270 allowing City water supply on an emergency basis for SPVH-MWC until December 31, 2003; and

WHEREAS, Council approved Resolution No. 7370 allowing City water supply on an emergency basis for SPVH-MWC until December 31, 2005; and

WHEREAS, SPVH-MWC is proceeding with the design of a permanent connection to the City water system.

NOW, THEREFORE, BE IT RESOLVED, The City Council of the City of Milpitas finds that an urgent public health and safety concern continues to exist at Spring Valley Heights and approves an extension of emergency water supply to the SPVH-MWC in accordance with the following conditions:

1. This Resolution supercedes Resolution No. 7370.
2. This extension of emergency water supply is allowed until a permanent connection to the City water system is installed and operating, or until December 31, 2007, whichever is sooner.
3. SPVH-MWC shall submit water use meter readings the last week of every month and reimburse the City of Milpitas at the second residential tier rate (currently set at \$2.93 per hundred cubic feet) for all emergency water supply obtained from the City.
4. SPVH-MWC shall be responsible for coordination with City staff for water supply points of connection, time of day and rate of draw for filling tanker trucks to transport water, and for meeting Fire Department fire protection requirements.
5. SPVH-MWC shall be responsible for meeting all Department of Health Services requirements related to use of the temporary emergency water

supply.

PASSED AND ADOPTED this 4th day of October, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

MEMORANDUM

Engineering Division

To: Greg Armendariz, City Engineer

From: Darryl Wong, Utility Engineer

Subject: Spring Valley Heights Request for Emergency and Permanent Water Supply

Date: September 23, 2005

Background: The Spring Valley Heights Mutual Water Company operates a drinking water well as the sole source of water supply for the Spring Valley Heights (SVH) subdivision. The well supply has diminished in capacity resulting in inadequate water supply to meet the health and safety needs of the subdivision. SVH has therefore requested water supply from the City of Milpitas. Key milestones and information on the SVH water supply system and background leading to this proposed agreement for services are highlighted in Exhibit 1.

On October 1, 2002, Council approved supply under emergency provisions of the City's Urban Growth Boundary Ordinance by Resolution 7223, (effective to 1/31/03). Water from the city water system is trucked to SVH to supplement the dwindling water well water supply. Extensions to this emergency supply were granted on January 21, 2003 by Resolution 7270 (effective to 12/31/03), and on December 16, 2003 by Resolution 7370 (effective to 12/31/05). In addition, on October 7, 2003 Council approved by Resolution 7350 a tentative agreement was approved with Spring Valley Heights for a permanent connection to the City. The tentative agreement was used as part of a LAFCO submittal for approval of service to demonstrate Milpitas concurrence. This request by SVH is to finalize the permanent connection agreement between Milpitas and SVH.

Discussion: Several actions were required to implement a SVH connection to the City of Milpitas water system. These include 1) satisfaction of the City's Urban Growth Boundary Ordinance requirements (Ordinance 38-742), 2) approval from San Francisco Public Utility Commission (SFPUC), and 3) approval from the Local Agency Formation Commission (LAFCO).

- 1) **Urban Growth Boundary Ordinance.** At the November 3, 1998 General Election, the electorate enacted Ordinance No. 38-742 ("the Urban Growth Boundary

Ordinance”), which established an Urban Growth Boundary, outside of which City services is restricted. Since SVH subdivision is located outside the Urban Growth Boundary, city water service is subject to ordinance requirements. Under the ordinance, the following four criteria must be met before Council may approve a permanent water supply for SVH:

- An urgent public health or safety concern exists
- An independent certified professional engineer determines that City supply is the only economically justifiable solution to the health and safety concern
- The subdivision map for the sites in question had been recorded on or before November 3, 1998
- The Applicant pays for the cost of service

These four criteria have been addressed as follows:

- The State Department of Health Services has determined that inadequate water supply exists, has instructed SVH to find additional supply, and supports connection to the Milpitas municipal supply. See attachment # 1.
- An independent licensed professional engineer (Todd Engineers) has reviewed the current water supply situation and found that connection to water system the City is the only economically justifiable solution to the health and safety concern. The engineer's report may be found as attachment # 2.
- The subdivision map was recorded prior to November 3, 1998.
- The proposed SVH and City of Milpitas agreement will be included in the Council packet specifying that the applicant will pay for the construction and operation of the water line extension. See attachment # 3.

- 2) **SFPUC Approval.** The City's supply contract with SFPUC prohibits resale of SFPUC water to for-profit water companies, including Mutual Water companies like that at Spring Valley Heights since such sale would be in technical violation of the Raker Act which governs SFPUC service. SFPUC has opined however that if the water were instead provided to the Spring Valley Heights Association (HOA), no violation would exist. The water supply agreement is therefore with the Spring Valley HOA, and not the Mutual Water Company.
- 3) **LAFCO Approval.** LAFCO must approve Milpitas municipal service to any site beyond the city boundary. Since one parcel served by the SVH water system is located outside the City boundary, LAFCO approval water service was therefore required. On November 17, 2003, the LAFCO executive officer and Commission Chair administratively approved water service based on health and safety concerns. The approval may be found as attachment # 4.

Recommendation: Staff has reviewed the SVH request for water supply, and has concluded that the Milpitas municipal water supply is adequate to serve the SVH subdivision. Staff also has determined that the four Urban Growth Boundary ordinance criteria have been satisfied as discussed above and that other approvals by SFPUC and LAFCO has been met. Staff therefore recommends that Council approve 1) an extension to the emergency water supply to SVH until December 31, 2007 or until a permanent connection to the City water supply is completed, and 2) an agreement for a permanent SVH construction and water supply connection to the City's water supply.

Attachments:

- Exhibit 1 - Key Chronological Milestones, Spring Valley Heights Water Supply
- Attachment 1 – State Department of Health services determination that inadequate water supply exists.
- Attachment 2 - Independent licensed engineer determination that the City of Milpitas connection is the only economically justifiable solution.
- Attachment 3 - Proposed agreement for construction and water supply between Milpitas and Spring Valley Heights HOA
- Attachment 4 - LAFCO service area approval

Cc: City Manager
Fire Marshal
Planning Director
Fire Chief

City Attorney
Chief Building Official
Finance Director
Utility File 20: Spring Valley Heights

EXHIBIT 1
Key Chronological Milestones, Spring Valley Heights Water Supply

- Original system constructed in 1978 consisted of a well, 120,000-gallon reservoir, fire hydrants, and connections to home fire sprinklers for fire protection. Well was 315 feet deep and produced about 45 gallons per minute (gpm).
- SVH's original well #1 went dry and was replaced by well #2 in 1997 which was set at 320 feet deep and produced about 90 to 100 gpm. When #2 went dry, it was replaced by well #3 set at about 280 feet in 2000.
- September 10, 2002 SVH reported that well #3 was dry and the on-site reservoir was almost empty. The well pump was lowered by 80 feet and their on-site water reservoir slowly began filling. Well produced 130 gpm and serves 16 customers who use about 30,000 gallons every 18 hours. Drilling of new well #4 was in progress.
- September 24, 2002 SVH requests permission to purchase Milpitas City water since diminished well capacity has resulted in inadequate water supply.
- October 1, 2002 Council approved Resolution #7223 authorizing SVH to truck up to 14,000 gallons per day (gpd) water from the Milpitas distribution system to the on-site reservoir to serve the sixteen households until the well capacity is adequately increased, or January 31, 2003 whichever occurs first.
- October 31, 2002 California Department of Health Services informs SVH that water supply shortage represents a "potentially significant public health risk to the water users living in the Spring Valley Heights community". Requires SVH, among other things, to submit information on water supply no later than November 15, 2002 and to refrain from issuing "will serve" letters for water connections to any undeveloped lots owners with the subdivision.
- November 2002 City identifies items and requests SVH to address for water supply conformance to Fire and Building codes, and advises that permits or authorizing occupancy may not be issued until reliability of service and fire protection can be established.
- December 13, 2002 Letter from SVH informing City that construction of new well #4 has not progressed as originally anticipated, and that new well may only provide temporary relief. SVH requests an eventual permanent connection to the Milpitas public water system.
- December 27, 2003 request from SVH for a time extension of emergency water supply from the City of Milpitas. City requests support information to place the request on the City Council agenda of January 21, 2003.
- January 21, 2003 Council approved Resolution #7270 extending the authorization to truck water until a permanent water supply is found or December 31, 2003, whichever occurs first.

- January 24, 2003 State Department of Health Services issues letter finding that SVH cannot reliably and consistently produce sufficient water to meet system demand, and instructing SVH to cease issuing "will-serve" letters, notify customers on quarterly basis of supply emergency, and develop a new water supply.
- February 13, 2003 Milpitas letter to SVH noting steps for permanent connection to Milpitas public water supply, including identification of point of connection, estimate of current and future demand (demand info to be provided to SFPUC), SVH to be responsible for costs, city to plan check and inspect.
- April 2003 Staff initiated discussions with SFPUC. Under the Federal Raker Act, through which the Hetch Hetchy system was constructed, resale of water to for-profit water companies is prohibited. Sale of water by Milpitas to a mutual water company such as the Spring Valley Mutual Water Company is denied.
- April 2003 Staff initiated discussions with LAFCO. One site (550 Vista Ridge) is located within the County and LAFCO approval for service is required.
- July 3, 2003 SVH submitted water demand information.
- July 24, 2003 SVH notified city that well #4 is not suitable for either drinking or irrigation due to both inadequate quantity and quality.
- July 29, 2003 City of Milpitas Building department issues permit #B-BP2003-48 to construct a second reservoir.
- August 14, 2003 State Department of Health Services letter supporting SVH connection to Milpitas public distribution system.
- August 28, 2003 SFPUC provided information on the structure of the HOA and Mutual Water Company to use in determining whether the Raker Act requirements can be complied with if water is supplied to the Spring Valley Heights Association rather than Mutual Water Company (SVHMWC).
- August 29, 2003 SVH-MWC notified staff that the well was going dry and they were beginning to truck water as previously approved by Council resolution. Up to now, trucking had not been necessary as the pump had been throttled back to operate at a lower rate is still adequate to maintain on-site reservoir level.
- August 29, 2003 SVH proposed a permanent connection point at Calaveras/Piedmont.
- September 2, 2003 SVH HOA and Mutual Water Company letter stating that well production has dropped to 8 to 10 gpm and that complete failure is imminent. Request expediting SFPUC approval support. Request alignment for pipeline along Calaveras Road.
- September 15, 2003 LAFCO executive officer states that even temporary supply requires LAFCO approval. Administrative approval may be granted if the following three conditions exist:
 - 1) Letter stating an "urgent health and safety concern exists" from the Health Department.
 - 2) It is not possible to have an alternative supply.
 - 3) Property is currently developed and someone is living there.

- September 16, 2003 City requests that the Department of Health write a letter stating an urgent health and safety concern exists as required by LAFCO for service to SVH.
- September 16, 2003 SFPUC agrees that supplying water to the Spring Valley HOA would not violate the Raker Act.
- September 19, 2003 LAFCO executive officer opines that annexation of the parcel within the County would not be an issue in the request to provide water since Spring Valley is outside both the Milpitas Urban Service Area and Urban Service Boundary.
- September 26, 2003 Department of Health writes letter certifying that SVH Mutual Water Company has experienced severe potable water shortage problems for more than a year and that a critical health concern exists. The letter supports supply of water from the City of Milpitas Water System.
- October 7, 2003 Council approves tentative agreement to supply water to Spring Valley Heights HOA, and to submit LAFCO request for Milpitas Water Service.
- October 16, 2003 City of Milpitas file LAFCO request for "Out of Agency Contract for Services" application consisting of:
 - 1) Out of Agency Contract for Service Application Form.
 - 2) Certified Council resolution requesting LAFCO action.
 - 3) Signed contract (tentative) between City and SVH on water supply.
 - 4) Copy of map of area.
 - 5) Completed Environmental Information Form.
 - 6) Staff report on proposal to City Council.
 - 7) Department of Health Service letter stating health and safety concern exists.
 - 8) List of cities that may be affected (Cities of San Jose, Fremont and County of Santa Clara).
 - 9) List of assessors parcel numbers.
 - 10) Completed disclosure forms (completed by SVH).
 - 11) Lobbying disclosure forms (completed by SVH).
 - 12) Filing fee of \$5,500 (paid by SVH).
- October 21, 2003 SFPUC letter received from General Manager stating that sale of water to HOA (not Mutual Water Company) is not viewed as "resale" under the Raker Act.
- November 13, 2003 City, SVH and County meet to discuss water connection alignment through County lands.
- November 17, 2003 LAFCO administrators approve extension of water services to 550 Vista Ridge Drive.
- December 31, 2003 City reiterates in letter to SVH the conditions for proposed connection. These conditions are that the SVH:
 - 1) Acquire right-of-way for all public lines.
 - 2) Pay full cost of environmental review, design, permitting and construction of the public line.
 - 3) Design and install water line in compliance with public water line standards.
 - 4) Payment of annual maintenance costs per a formal water service agreement.

- April 8, 2004 SVH engineering consultant (Sandis Humber Jones) writes letter requesting City consider taking ownership of an existing water line owned by County in Ed Levin park to supply water to SVH.
- April 22, 2004 SVH's consultant (Sandis Humber Jones) solicits County to use County transmission line to supply SVH subdivision, or to allow a new water line to be constricted to SVH through County lands.
- April 29, 2004 County of Santa Clara, Environmental Resources Agency, Parks and Recreation Dept. states they prefer City taking over existing water line through Ed Levin County Park to provide water to SVH.
- May 10, 2004 City meets with County regarding water supply to SVH.
- May 18, 2004 City meets with Sandis Humber Jones on options.
- June 9, 2004 City writes letter stating that City ordinance requires as part of the extension, SVH pay for the extension and operating and all Milpitas standards are met for the extension for lines that become public facilities. A private line is acceptable as long as the connection meets City standards. An evaluation to confirm Ed Levin Park pipeline conditions to see if it complies with public water line standards is required.
- June 18, 2004 City writes follow-up letter in response to additional questions on transfer of County owned line. Observations indicate line size is of insufficiently size for minimum fire flows, depth of pipeline cover is inadequate, additional air relief valves and backflow prevention devices are required to meet public water line standards.
- July 19, 2004 County states that easement cannot be granted to Spring Valley Heights (a private entity) since they require the easement agreement be with an accountable grantee such as the City of Milpitas.
- September 28, 2004 Letter from Milpitas to County with cc to SVH summarizing a September 3, 2004 meeting among County, SVH and City Representatives. An alignment consisting of three segments is proposed:
 - 1) Segment A: Alignment from City connection point on hillside Minnis tank access road to Old Calaveras Rd. to be a public line meeting city standards. A meter would be located at old Calaveras Road to measure water sold to SVH.
 - 2) Segment B: Alignment along Downing Road between old Calaveras Road and Calaveras Road. This would be a private line owned by SVH HOA on City of Milpitas easement.
 - 3) Segment C: Alignment along Ridge Road. This would be a private line owned by SVH HOA on County easement.
- October 19, 2004 Letter from County to City stating Segment C would need to involve transfer of easement to City to allow private water line to be constructed.
- December 27, 2004 County agrees to grant SVH an easement on Segment C with a litigation guarantee clause, and on the basis that the easement does not interfere with park services. An easement currently exists for Pac Bell, and cable and PG&E will be included in the proposed new easement agreement between the County and SVH.
- January 24, 2005 City summarizes activities in e-mail to SVH: City will contact County for easement on Segment A. An easement agreement will be developed by Milpitas for

Segment B between City and SVH. SVH will work directly with County on easements for Segment C. City requests information on design of pipeline status and offers to work directly with consultant on legal descriptions. Request revisions and finalizing of water supply agreement.

- SVH Water Line Initial Study and Mitigated Negative Declaration issued with comment period between July 21 and Aug. 21, 2005.
 - July 16 – September 14, 2005 City receives and responds to comments from SVH on agreement.
- August 18, 2005 City responds to comments by SVH on water line connection and water supply agreement. Final version is completed.

Attachment 1 – State Department of Health services determination that inadequate water supply exists.

ATTACHMENT #1

ATTACHMENT 2
20. Spring Valley Heights

State of California—Health and Human Services Agency
Department of Health Services

50.0.2



GRAY DAVIS
Governor

RECEIVED
JAN 27 2003
CITY OF MILPITAS
ENGINEERING DIVISION

California
Department of
Health Services

DIANA M. BONTA, R.N., Dr. P.H.
Director

January 24, 2003

Mr. Bob Scott
Spring Valley Heights Mutual Water Company
3545 Vista Norte Court
Milpitas, CA 95035

Dear Mr. Scott:

WATER SUPPLY EVALUATION

Spring Valley Heights Mutual Water Company, System No. 4300856

This letter is to provide a water supply evaluation of the Spring Valley Heights Mutual Water Company as required by Section 64562(a), Chapter 16, *California Waterworks Standards*, Title 22, California Code of Regulations. Section 64562(a) states, "Sufficient water shall be available from the water sources and distribution reservoirs to supply adequately, dependably and safely the total requirements of all users under maximum demand conditions before agreement is made to permit additional service connections to a system."

The Department of Health Services (Department) was notified by the City of Milpitas that Spring Valley Heights Mutual Water Company (SVHMWC) had experienced a water supply shortage last year requiring SVHMWC to formally request a temporary emergency water supply from the City. The City approved a resolution that allowed SVHMWC to truck water to its system for a period of 6 months. SVHMWC has not been able to remedy its water supply problem during this period and has asked the City for an extension of the resolution.

On October 31, 2002, our Department issued a letter to SVHMWC requesting all information related to water supply and water usage. The information request included pump test data for the well, design calculations for the distribution system, and customer usage records. On November 27, 2002, SVHMWC provided by electronic mail only data related to monthly water system usage. It was not indicated how the water usage information was collected. No water production information has been provided. Due to the limited information and data provided, the Department cannot make an accurate determination of SVHMWC's ability to reliably and dependably serve all of its users.



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www.consumerenergycenter.org/flex/index.html

Drinking Water Field Operations Branch, 2151 Berkeley Way, Room 458, Berkeley, CA 94704-1011
(510) 540-2158 FAX (510) 540-2152

DHS Internet Address: www.dhs.ca.gov Program Internet Address: www.dhs.ca.gov/os/drdwem

Anecdotal information provided during phone conversations suggests that Well No. 3 is currently producing 30-35 gallons per minute (gpm). This information was developed indirectly by observing the fill rate of the storage tank while the well pump is in operation. It does not necessarily take into account system demand at the time of the observation. Nor does it demonstrate a steady, constant supply of water for a sustained period of time. Because the well is throttled to prevent excessive drawdown, well run times are relatively short to allow recharge, and due to the anecdotal data collection methods for well production, the Department assigns a well capacity of 25% of the reported production rate. Therefore, the Department assigns a well capacity value of 8 gpm.

Monthly water usage data collected from August 2001 through September 2002 indicates a peak monthly usage rate of 433,410 gallons in July 2002. This is equivalent to a system-wide daily demand of 13,981 gallons. Using a daily peaking factor of 1.5, it can be estimated that the maximum daily demand is 20,972 gallons (or 14.6 gpm).

Based on our assessment of available information, the system supply needs under maximum demand conditions is approximately 15 gpm while the sustained yield of SVHMWC's well is 8 gpm. As a result, the Department finds that SVHMWC cannot reliably and consistently produce sufficient water to meet its system demand.

SVHMWC is instructed to comply with the following until the new well is approved and brought on line:

- Discontinue issuing "will serve" letters to any owners of undeveloped lots within the Spring Valley Heights subdivision.
- Continue to notify all customers of SVHMWC on a quarterly basis of the ongoing water supply problem and emphasize the importance of water conservation, especially during the high use time periods of summer and early fall.
- Pursue returning to compliance with the requirements found in the waterworks standards as soon as possible by developing a new source (or sources) of water supply.

SVHMWC must apply for a permit and be approved by the Department prior to operating the new well (Well 4). Our letter, dated January 15, 2002, outlines all of the documentation necessary to get approval to use the well. The documents include: a permit application, a check made out to *Department of Health Services, Drinking Water Program* for \$258.00 to process the application, a completed Environmental Information Form, engineering plans and specifications of the well construction, a source site plan, a completed source water assessment, Title 22 water quality analytical reports, drillers report, well log, and well pump test. Based on our records, we have not received any of this information from SVHMWC to date. Please note that the Department can take 30 days to determine if the application is complete and accepted for filing and an additional 90 days to complete the permit. It is in SVHMWC's best interest to make this a top

Bob Scott
January 24, 2003
Page 3

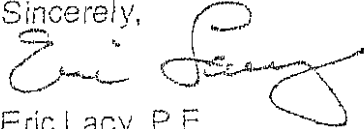
priority and put this documentation together for submittal to our office as soon as possible to prevent the delay of using the well.

In addition, the well pump test must follow the following steps:

1. Pump the well continuously for 72 hours using a constant rate of water discharge;
2. Take measurements of water drawdown and pumping rate every 4 hours;
3. Pump until the water drawdown level is constant for at least 4 measurements;
4. Plot the drawdown measurements against the logarithm of time elapsed since the beginning of the pump test, which should produce a straight line.


If you have any questions regarding this matter, please contact me at (510) 540-2413.

Sincerely,



Eric Lacy, P.E.
District Engineer
Santa Clara District
Drinking Water Field Operations Branch

cc: Santa Clara County Environmental Health Department


Associate Civil Engineer
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Attachment 2 - Independent licensed engineer determination that the City of Milpitas connection is the only economically justifiable solution.

20-
Spring Valley

TODD ENGINEERS

GROUNDWATER • WATER RESOURCES • HYDROGEOLOGY • ENVIRONMENTAL ENGINEERING

MEMORANDUM BY FAX

Date: September 13, 2005

To: Darryl Wong, Principal Civil Engineer
Marilyn Nickel, Associate Civil Engineer
Utility Engineering Department
City of Milpitas

Fax# 408-586-3305

From: Raymond K. Will
Registered Civil Engineer #26005

Subject: Emergency Water Supply, Spring Valley Heights Mutual Water Company

This Letter is to request the continuation of permission to obtain City of Milpitas water to be supplied to Spring Valley Heights Mutual Water Company due to the continuing emergency conditions. Water is being hauled by truck from a city fire hydrant, until the permanent pipeline can be designed and constructed. The pipeline cannot be constructed until necessary permits are secured. The following is text from the previous letter repeated to provide background information.

A letter provided my opinion with regard to the continuing emergency water shortage described in the Emergency Water Request, dated September 24, 2002, and September 2, 2003, in addition to the most recent request of December 4, 2003, from the Spring Valley Heights Homeowners Association and Mutual Water Company (SVH) prepared pursuant to the provisions of Resolution 6796 of the City of Milpitas (City) General Plan Amendment, Section 2A (ii) "Urgent Public Health or Safety Concern Affecting Existing Development".

Todd Engineers was initially retained to provide a professional opinion concerning the provision cited above and submitted a technical memorandum to the City on September 26, 2002 stating the following opinion:

"It is my professional opinion that the only economically justifiable solution to this public health concern is to obtain City water."

A second letter from Todd Engineers was submitted January 8, 2003, confirming the continuing water shortage.

My conclusion was based on review of the following: 1) site conditions observed during site inspection of the four water wells, water storage tank, and water distribution pipeline system; 2) site topographic and geologic maps prepared by the U.S. Geological Survey, 3) plan maps of the lots, and roads of the subdivision. 4) geophysical electric log of the test Well #4, 5) groundwater chemistry collected from the wells, and 6) telephone discussions with City planning and engineering department staff.

The emergency purchase and truck transport of City water although of relatively higher cost (2.5 to 3.0 cent/gallon) that water from the SVH Mutual Water Company system, is necessary because production Well #3 does not have sufficient capability to meet current domestic and fire protection needs. This is a result of local drought conditions and declining groundwater table.

The cost of trucking water from an alternative source (San Jose Water Company) was considered but was 12.5 cents/gallon, much greater than the cost of City water and would cost over \$40,000 per month.

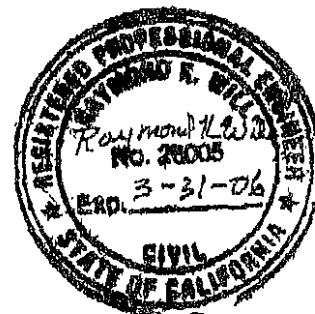
After a very aggressive rehabilitation program and testing, the new production Well #4 has been unsuccessful and the water is of unacceptable quality. Historically, each of the previous 3 production wells initial capacity was sufficient but declined within 3 or 4 years to an insufficient volume for a permanent water supply.

Discussions with Bob Scott indicate that although the SVH Mutual Water Company has had some success with reducing yields from Well #3 to maintain some flow, (8 to 10 gallons per minute) and water conservation efforts by residents, the district has been required to purchase water, transported by truck, to maintain a sufficient water supply to residents.

In summary the technical evaluation has included examination of the 1) site topographic setting, structural geology and mineralization, 2) well drilling logs and geophysical logs of the boring, 3) groundwater quality from laboratory analysis, 4) hydrologic parameters and historic production records from the existing 4 water wells. 5) costs of supplying water by trucking.

Based on the above evaluation, my conclusion is that no reasonable cost effective solution appears to be available except construction of a permanent pipeline to connect SVH with the City of Milpitas municipal water distribution system.

Cc: Bob Scott - SVH Fax#408-934-1886



Attachment 3 – Proposed Agreement for water supply between City of Milpitas and Spring Valley HOA.

Control No. _____

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, CA 95035

AGREEMENT FOR THE PROVISION OF CITY POTABLE WATER SERVICE
(INCLUDING PROPERTY LOCATED OUTSIDE THE CITY LIMITS)

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Spring Valley Heights Association, hereinafter referred to as "ASSOCIATION."

WHEREAS, ASSOCIATION is a homeowners' association made up of the owners of the 25 lots in the Spring Valley Heights subdivision within the City of Milpitas, which owners are referred to herein as "the Members"; and

WHEREAS, the 25 lots of the Spring Valley Heights Subdivision plus one additional lot together make up the Spring Valley Heights Community (Community); and

WHEREAS, the existing private water system that serves the Community is operated by the Spring Valley Heights Mutual Water Company ("the Company"); and

WHEREAS, the Company's existing groundwater supply has diminished and is now inadequate to provide for health and safety needs of the Community; and

WHEREAS, the Company is receiving temporary emergency water supply from the CITY'S municipal water supply for the Community; and

WHEREAS, the State of California Department of Health Services has evaluated the Company's existing groundwater supply and instructed the Company to develop a new water source or supply; and

WHEREAS, the Company developed a new well and determined that it was of inadequate quantity and quality for potable water purposes; and

WHEREAS, ASSOCIATION desires a permanent connection to the CITY'S municipal water supply to serve the Community; and

WHEREAS, CITY finds that adequate utility capacity exists to provide such service within its San Francisco Public Utility Commission water supply service area; and

WHEREAS, the San Francisco Public Utility Commission has approved use of this water contingent upon ASSOCIATION, rather than the Company, supplying water to the lots within the Community in order to comply with the provisions in the Raker Act, which prohibit supplying water to private companies for resale; and

WHEREAS, ASSOCIATION is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to provide retail water service to the Community through a master meter.

NOW, THEREFORE, in consideration of the promises herein and for further good and valuable consideration hereinafter set forth, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. Subject Property. The properties to be served by water supplied to the ASSOCIATION by the City shall be solely those properties described on Exhibit A which is attached hereto and incorporated herein by this reference.

SECTION 2. Conditions for Receipt of Water Service. ASSOCIATION may provide potable water service to the properties described in Exhibit A provided that ASSOCIATION and its Community shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, ASSOCIATION agrees to *disconnect or otherwise discontinue* providing water service to a property for the failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. ASSOCIATION shall prepare plans and specifications for installation of an extension of the City's existing potable water system that terminates at master water meter ("the Master Meter") through which water will be provided to the Members, which plans shall be subject to approval of the City. The Water System Extension may include piping, pumps, pump stations, controls, emergency generators, programmable logic controller, and other necessary appurtenances. ASSOCIATION shall install potable water mains in the public street or in an existing public service easement to the public potable water system connection point shown as Segment A on Exhibit B, all subject to approval by the City and in accordance with the then-existing CITY standards.

SECTION 4. Costs. The ASSOCIATION shall pay the following costs as set forth below:

A. The ASSOCIATION shall pay all costs to the City associated with the Water System Extension. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Extension. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private Job (PJ) cost reimbursement process. The ASSOCIATION has provided an initial deposit in the amount of \$5,000 on August 1, 2003 and subsequent payments to maintain their PJ balance. The ASSOCIATION agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to the ASSOCIATION.

B. Upon completion of the physical connection of the public potable water system to the Master Meter and prior to the commencement of water service, the ASSOCIATION shall make a lump-sum payment equal to the City's then-current water connection fee for each

structure connecting to the system. Upon the proposed connection of additional structures to the system and prior to the issuance of building permits for said structures, the individual property owners shall pay a fee equal to the amount of the then-current connection fee. The ASSOCIATION acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

C. The ASSOCIATION shall pay the City's costs of operating and maintaining the Public Water System Extension (Segment A on Exhibit B map) and Master Meter including labor, pipeline and equipment replacement, and routine material consumed during operation of the system. Such cost shall be set at an annual fixed rate of \$18,100. The ASSOCIATION shall pay the annual fixed maintenance and operations cost invoice within 30 days of the date of the invoice. A sample calculation of operating and maintenance costs is shown in Exhibit C.

D. The ASSOCIATION shall pay to the City water meter and water quantity charges on the City's standard billing cycle based on the water supplied to the Master Meter and as required by the City's then-current water rates, whether adopted by ordinance, resolution, or otherwise.

E. In addition, the ASSOCIATION shall, on request by CITY, reimburse CITY for any other reasonable costs that are a direct or indirect result of the Water System Extension to the extent such costs are not otherwise covered herein.

Unless otherwise set forth herein, all fees and charges described above will be due and payable at the time said fees are usually and customarily collected by CITY under its rules and regulations respecting such fees and charges.

SECTION 5. ASSOCIATION shall be responsible for all acquisition of any necessary right-of-way for the Public Water System Extension (Segment A), prepare necessary environmental documents, implement improved mitigation measures, and construct the Water System Extension in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction. The ASSOCIATION shall cause the designer of the Public Water System Extension to develop and provide to the City prior to the City's acceptance an operation and maintenance manual.

SECTION 6. ASSOCIATION shall dedicate all newly constructed public potable water supply facilities (up to the Master Meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (up to, and including, the Master Meter) installed by ASSOCIATION that have been inspected and approved by CITY after the system is dedicated to the CITY.

SECTION 8. Further, CITY shall not be liable in any way for damages to ASSOCIATION or ASSOCIATION's property resulting from acts of God or any other act or acts beyond the control of CITY which may in any way cause interruption or discontinuance of the potable water service(s) provided hereunder.

SECTION 9. The ASSOCIATION is responsible for acquisition of any necessary right-of-way for the private portion of the potable water distribution system. An encroachment permit

Agreement (entering upon public right of way) from the City of Milpitas is required for Segment B (see Exhibit D). An easement from the County of Santa Clara is required for Segment C. There is a separate agreement being developed for segment C between the County of Santa Clara and the ASSOCIATION, which includes a trail easement and is not part of this AGREEMENT. Segment D is within the ASSOCIATION right of way and does not require any other party approval for right of way.

SECTION 10. ASSOCIATION expressly agrees that all maintenance of the private potable water distribution system, shown as Segments B, C and D on Exhibit B, after the Master Meter shall be the responsibility of ASSOCIATION and the Members. ASSOCIATION shall keep the potable water distribution system under its ownership in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies. These three segments (B, C and D) shall be subject to the requirements of Public Works Engineering Division and/or Building Inspection Division. Prior to the commencement of construction of these segments, ASSOCIATION shall provide City with detailed drawings reflecting the extent, configuration and alignment.

SECTION 11. Under an Agreement between CITY and the County of Santa Clara (hereinafter, "COUNTY") entitled "Agreement for Sale of Waterline Easement to City of Milpitas- Ed R. Levin County Park", ("the COUNTY Agreement") City will obtain rights to a waterline easement for Segment A of the proposed water transmission line. As part of the COUNTY Agreement, CITY will assume various obligations and pledges to fulfill conditions with respect to Santa Clara County. ASSOCIATION hereby assumes responsibility and for the fulfillment of the following obligations to be outlined in the County Agreement:

- A. Performance Bond. ASSOCIATION shall secure a performance bond for completion of the waterline improvements and restoration of COUNTY lands equal to 100% of CITY'S project construction costs to insure the total project completion, including design, permitting, construction and construction management of the Segment A Easement Improvements. Such bond shall include both the COUNTY and CITY as beneficiaries on the performance bond.
- B. Environmental Compliance and Indemnification. ASSOCIATION agrees to indemnify and hold harmless COUNTY, its governing board, officers, employees and agents, against any and all liability, including third party conduct except for COUNTY'S conduct, arising out of the presence, use, generation, storage, release or disposal of hazardous materials on the areas contained within the Easement Improvements because of CITY'S construction. ASSOCIATION further agrees to indemnify and hold harmless CITY and City's elected and appointed officials, employees, agents and contractors ("City Indemnitees"), against any and all liability, including third party conduct except for CITY'S conduct, arising out of the presence, use, generation, storage, release or disposal of hazardous materials on the areas contained within the Easement Improvements because of CITY'S construction. Such indemnity shall include:

- a. All foreseeable and unforeseeable consequential damages arising out of such presence, use generation, storage, release or disposal of hazardous materials;
 - b. The cost of any required or necessary repair, cleanup, remediation, or decontamination and the preparation of any site mitigation closure or other required plans arising out of such presence, use, generation, storage, release or disposal of hazardous materials.
- C. Definition of Hazardous Materials. "Hazardous Materials" shall include, but not be limited to, flammable explosives, radioactive materials, hazardous wastes, toxic substances and related materials, and substances defined as "hazardous substances" or "hazardous materials" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; and those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to said laws.
- D. Additional Indemnification of CITY. Association additionally agrees to indemnify and hold harmless CITY Indemnitees from and against all claims, demands, liabilities, judgments, losses, costs and expenses (including reasonable attorneys' fees and expenses) arising out of or related to CITY'S provision of potable water service to the properties described in Exhibit "A" except to the extent the same are attributable to the gross negligence or willful misconduct of CITY or CITY'S Indemnitees. It is the intent of the Parties that CITY shall have no liability for claims arising in connection with the use of the Segment A Easement Area or the improvements erected thereon other than as expressly stated in this Section.

SECTION 12. Association shall provide record drawings of pipeline segments A, B, C and D to the City prior to acceptance of the pipeline.

SECTION 13. Upon ASSOCIATION's breach of or failure to timely perform any of the terms of this Agreement, this Agreement may be terminated at CITY's sole option, and CITY may discontinue service.

SECTION 14. ASSOCIATION further agrees that its on-site distribution system shall only serve the parcels described in Exhibit "A," and does not extend to any additional subdivision of said property.

SECTION 15. Underground Service Alert Membership. ASSOCIATION shall become a member of the underground service alert and remain an active member for perpetuity of the encroachment. ASSOCIATION shall be responsible for all subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its

underground facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

SECTION 16. Prior to any construction of waterline transmission improvements in Segment B, ASSOCIATION shall execute and record at the office of the County Clerk an Encroachment Permit Agreement substantially in the form of Exhibit D, attached.

SECTION 17. This Agreement shall be binding upon the successors, heirs, or assigns of ASSOCIATION.

SECTION 18. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at ASSOCIATION's cost and expense, and that the provisions contained herein relative to the real property described in Exhibit "A" shall operate as covenants and restrictions thereon.

SECTION 19. This Agreement shall become null and void and without any further force or effect if the CITY and COUNTY are unable to reach agreement for utility easements for Segment A.

SECTION 20. Entire Agreement: This constitutes the entire agreement between the parties and this agreement may be modified only by a written document signed and dated by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

CITY OF MILPITAS, a municipal corporation ASSOCIATION:

Jose S. Esteves, Mayor

Dated: _____, 20__

Dated: _____, 20__

ATTEST:

Mary Lavelle, City Clerk

APPROVED AS TO FORM:

Steve Mattas, City Attorney

- Exhibit A: Properties governed by this Agreement
- Exhibit B: Spring Valley Heights Water Supply Transmission Line
- Exhibit C: Sample Calculation for Operating and Maintenance Costs
- Exhibit D: Encroachment Permit Agreement for Segment B

Exhibit A Properties governed by this Agreement

APN 42-30-026	3547 Vista Norte Court
APN 42-30-027	2553 Vista Norte Court
APN 42-30-028	3561 Vista Norte Court
APN 42-30-004	3545 Vista Norte Court
APN 42-30-005	3550 Vista Norte Court
APN 42-30-025	350 Vista Ridge Drive
APN 42-30-006	375 Vista Ridge Drive
APN 42-30-029	531 Vista Ridge Drive
APN 42-30-015	529 Vista Ridge Drive
APN 42-30-14	527 Vista Ridge Drive
APN 42-30-013	525 Vista Ridge Drive
APN 42-30-012	523 Vista Ridge Drive
APN 42-30-008	489 Vista Ridge Drive
APN 42-30-011	521 Vista Ridge Drive
APN 42-30-010	519 Vista Ridge Drive
APN 42-30-009	517 Vista Ridge Drive
APN 42-30-007	461 Vista Ridge Drive
APN 42-30-017	510 Vista Spring Court
APN 42-30-018	514 Vista Spring Court
APN 42-30-019	518 Vista Spring Court
APN 42-30-021	500 Vista Spring Court
APN 42-30-024	410 Vista Ridge Drive
APN 42-30-022	490 Vista Ridge Drive
APN 42-30-023	422 Vista Ridge Drive
APN 42-30-020	524 Vista Ridge Drive
APN 42-31-002	548 Vista Ridge Drive and 550 Vista Ridge Drive (COUNTY PARCEL)

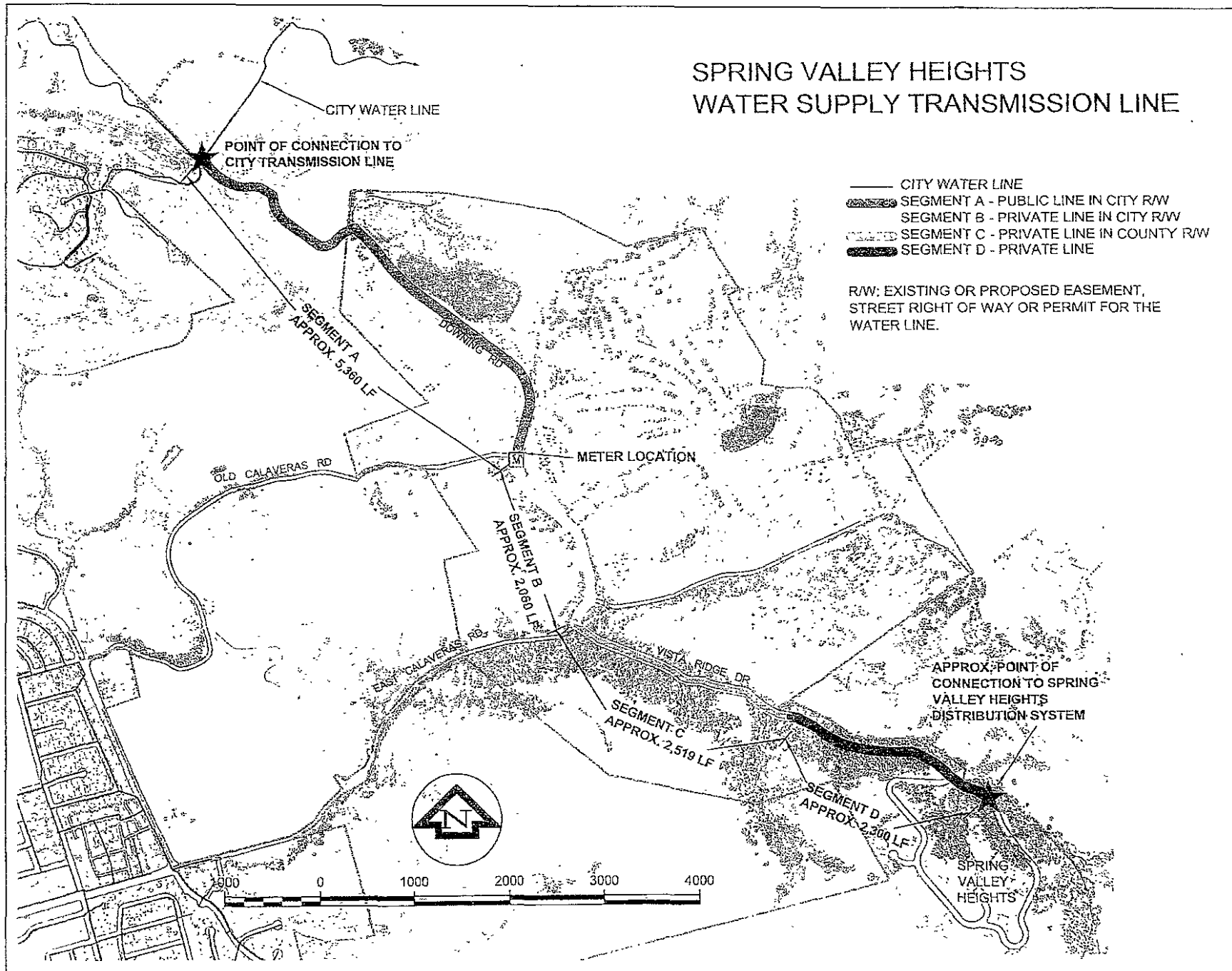


Exhibit C Water Fee Schedule

Assumptions for assessing Spring Valley Heights water fees for two different pipe materials are shown below for the public water line (Segment A). Water fees were evaluated over 100 years and broken down into two components: Operation & Maintenance (O&M) costs and capital replacement costs.

Assumptions:

- **8" Ductile Iron Pipe**
 - Construction Cost = \$653,000 (5,360 linear feet, fire hydrants, and valves per Preston Pipeline budgetary estimates)
 - Useful Life of Pipe = 100 Years (based on 2002 City of Milpitas Utility Depreciation Study by Schaaf & Wheeler)
- **8" PVC C900 Pipe**
 - Construction Cost = \$457,000 (5,360 linear feet, fire hydrants, and valves per Preston Pipeline budgetary estimates)
 - Useful Life of Pipe = 70 Years (based on 2002 City of Milpitas Utility Depreciation Study by Schaaf & Wheeler)
- Annual O&M = 1% of Construction Cost
- Value of money at 3% interest
- 1.8% Inflation (based on historical San Francisco Engineering New Record increase from 9/93-6516.67 to 9/03-7801.95)
- Estimated Annual Water Use (at Buildout) = 12 Million Gallons (based on 7/3/03 email from Bob Scott of the Spring Valley Homeowners Association)*

Calculations to determine costs needed to cover annual O&M for the useful life of the pipe are shown in Exhibits 1 and 2 for the two different pipe materials.

Equivalent Annual Payments

Spring Valley would make annual lump sum payments to pay for O&M and replacement cost of the public portion of the water line. The Home Owners Association would be responsible for annual payments to the City. Payments would be placed into the water fund, and the water fund would pay for the O&M and capital replacement. Based on this evaluation, these annual payments will provide adequate funding for both O&M costs and for future line replacement costs.

Equivalent Annual Payments	O&M Costs	Capital Replacement Costs	TOTAL
8" Ductile Iron Pipe	\$12,100	\$6,400	\$18,500
8" PVC C900 Pipe	\$8,500	\$9,600	\$18,100

* Currently there are 16 occupied parcels. At buildout, 26 occupied parcels are anticipated

EXHIBIT C-1 **8" Ductile Iron Pipe - Equivalent Annual Payments**

O&M Costs:

➤ 100 year O&M Present Worth by applying an annual 1.8% inflation at 3% interest.

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
1	\$6,530.00	\$117.54	\$6,647.54		\$6,453.92
2	\$6,647.54	\$119.66	\$6,767.20		\$6,378.73
3	\$6,767.20	\$121.81	\$6,889.01		\$6,304.42
4	\$6,889.01	\$124.00	\$7,013.01		\$6,230.97
5	\$7,013.01	\$126.23	\$7,139.24		\$6,158.37
6	\$7,139.24	\$128.51	\$7,267.75		\$6,086.62
7	\$7,267.75	\$130.82	\$7,398.57		\$6,015.71
8	\$7,398.57	\$133.17	\$7,531.74		\$5,945.63
9	\$7,531.74	\$135.57	\$7,667.31		\$5,876.36
10	\$7,667.31	\$138.01	\$7,805.32		\$5,807.89
11	\$7,805.32	\$140.50	\$7,945.82		\$5,740.23
12	\$7,945.82	\$143.02	\$8,088.85		\$5,673.35
13	\$8,088.85	\$145.60	\$8,234.44		\$5,607.26
14	\$8,234.44	\$148.22	\$8,382.66		\$5,541.93
15	\$8,382.66	\$150.89	\$8,533.55		\$5,477.36
16	\$8,533.55	\$153.60	\$8,687.16		\$5,413.55
17	\$8,687.16	\$156.37	\$8,843.52		\$5,350.48
18	\$8,843.52	\$159.18	\$9,002.71		\$5,288.14
19	\$9,002.71	\$162.05	\$9,164.76		\$5,226.53
20	\$9,164.76	\$164.97	\$9,329.72		\$5,165.64
21	\$9,329.72	\$167.94	\$9,497.66		\$5,105.46
22	\$9,497.66	\$170.96	\$9,668.62		\$5,045.98
23	\$9,668.62	\$174.04	\$9,842.65		\$4,987.19
24	\$9,842.65	\$177.17	\$10,019.82		\$4,929.09
25	\$10,019.82	\$180.36	\$10,200.18		\$4,871.66
26	\$10,200.18	\$183.60	\$10,383.78		\$4,814.90
27	\$10,383.78	\$186.91	\$10,570.69		\$4,758.81
28	\$10,570.69	\$190.27	\$10,760.96		\$4,703.36
29	\$10,760.96	\$193.70	\$10,954.66		\$4,648.57
30	\$10,954.66	\$197.18	\$11,151.84		\$4,594.41
31	\$11,151.84	\$200.73	\$11,352.57		\$4,540.88
32	\$11,352.57	\$204.35	\$11,556.92		\$4,487.98
33	\$11,556.92	\$208.02	\$11,764.94		\$4,435.69
34	\$11,764.94	\$211.77	\$11,976.71		\$4,384.01
35	\$11,976.71	\$215.58	\$12,192.29		\$4,332.94
36	\$12,192.29	\$219.46	\$12,411.75		\$4,282.46
37	\$12,411.75	\$223.41	\$12,635.17		\$4,232.57
38	\$12,635.17	\$227.43	\$12,862.60		\$4,183.25
39	\$12,862.60	\$231.53	\$13,094.13		\$4,134.52
40	\$13,094.13	\$235.69	\$13,329.82		\$4,086.35
41	\$13,329.82	\$239.94	\$13,569.76		\$4,038.74

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
42	\$13,569.76	\$244.26	\$13,814.01		\$3,991.69
43	\$13,814.01	\$248.65	\$14,062.67		\$3,945.18
44	\$14,062.67	\$253.13	\$14,315.79		\$3,899.22
45	\$14,315.79	\$257.68	\$14,573.48		\$3,853.79
46	\$14,573.48	\$262.32	\$14,835.80		\$3,808.89
47	\$14,835.80	\$267.04	\$15,102.84		\$3,764.52
48	\$15,102.84	\$271.85	\$15,374.70		\$3,720.66
49	\$15,374.70	\$276.74	\$15,651.44		\$3,677.31
50	\$15,651.44	\$281.73	\$15,933.17		\$3,634.47
51	\$15,933.17	\$286.80	\$16,219.96		\$3,592.12
52	\$16,219.96	\$291.96	\$16,511.92		\$3,550.27
53	\$16,511.92	\$297.21	\$16,809.14		\$3,508.91
54	\$16,809.14	\$302.56	\$17,111.70		\$3,468.03
55	\$17,111.70	\$308.01	\$17,419.71		\$3,427.63
56	\$17,419.71	\$313.55	\$17,733.27		\$3,387.69
57	\$17,733.27	\$319.20	\$18,052.47		\$3,348.23
58	\$18,052.47	\$324.94	\$18,377.41		\$3,309.22
59	\$18,377.41	\$330.79	\$18,708.20		\$3,270.66
60	\$18,708.20	\$336.75	\$19,044.95		\$3,232.56
61	\$19,044.95	\$342.81	\$19,387.76		\$3,194.90
62	\$19,387.76	\$348.98	\$19,736.74		\$3,157.68
63	\$19,736.74	\$355.26	\$20,092.00		\$3,120.89
64	\$20,092.00	\$361.66	\$20,453.66		\$3,084.53
65	\$20,453.66	\$368.17	\$20,821.82		\$3,048.59
66	\$20,821.82	\$374.79	\$21,196.62		\$3,013.07
67	\$21,196.62	\$381.54	\$21,578.15		\$2,977.97
68	\$21,578.15	\$388.41	\$21,966.56		\$2,943.27
69	\$21,966.56	\$395.40	\$22,361.96		\$2,908.98
70	\$22,361.96	\$402.52	\$22,764.48		\$2,875.09
71	\$22,764.48	\$409.76	\$23,174.24		\$2,841.60
72	\$23,174.24	\$417.14	\$23,591.37		\$2,808.49
73	\$23,591.37	\$424.64	\$24,016.02		\$2,775.77
74	\$24,016.02	\$432.29	\$24,448.30		\$2,743.43
75	\$24,448.30	\$440.07	\$24,888.37		\$2,711.47
76	\$24,888.37	\$447.99	\$25,336.37		\$2,679.88
77	\$25,336.37	\$456.05	\$25,792.42		\$2,648.66
78	\$25,792.42	\$464.26	\$26,256.68		\$2,617.80
79	\$26,256.68	\$472.62	\$26,729.30		\$2,587.30
80	\$26,729.30	\$481.13	\$27,210.43		\$2,557.16
81	\$27,210.43	\$489.79	\$27,700.22		\$2,527.37
82	\$27,700.22	\$498.60	\$28,198.82		\$2,497.92
83	\$28,198.82	\$507.58	\$28,706.40		\$2,468.82
84	\$28,706.40	\$516.72	\$29,223.12		\$2,440.06
85	\$29,223.12	\$526.02	\$29,749.13		\$2,411.63
86	\$29,749.13	\$535.48	\$30,284.62		\$2,383.53
87	\$30,284.62	\$545.12	\$30,829.74		\$2,355.76
88	\$30,829.74	\$554.94	\$31,384.68		\$2,328.32
89	\$31,384.68	\$564.92	\$31,949.60		\$2,301.19
90	\$31,949.60	\$575.09	\$32,524.69		\$2,274.38

Year	O&M	1.8% Inflation	O&M Future Value		O&M Present Value (3% interest)
91	\$32,524.69	\$585.44	\$33,110.14		\$2,247.88
92	\$33,110.14	\$595.98	\$33,706.12		\$2,221.69
93	\$33,706.12	\$606.71	\$34,312.83		\$2,195.81
94	\$34,312.83	\$617.63	\$34,930.46		\$2,170.23
95	\$34,930.46	\$628.75	\$35,559.21		\$2,144.94
96	\$35,559.21	\$640.07	\$36,199.27		\$2,119.95
97	\$36,199.27	\$651.59	\$36,850.86		\$2,095.25
98	\$36,850.86	\$663.32	\$37,514.18		\$2,070.84
99	\$37,514.18	\$675.26	\$38,189.43		\$2,046.72
100	\$38,189.43	\$687.41	\$38,876.84		\$2,022.87
					\$382,354.65

$P = \text{O\&M carried forward } (1+i)^n$ so, after applying for each of the 100 years
 $P = \$382,355$

- Calculated Annual Cost by applying 3% to 100 year O&M Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$382,355 [(0.03 (1+0.03)^{100}) / ((1+0.03)^{100} - 1)] = \$12,113$$

Capital Replacement Costs:

- 100 year Future Worth by applying 1.8% inflation to \$653,659

$$F = P (1+i)^n = \$653,659 (1+0.018)^{100} = \$3,891,608$$

- Calculated Annual Cost by applying 3% to 100 year Future Worth

$$A = F [i / ((1+i)^n - 1)] = \$3,891,608 [0.03 / ((1+0.03)^{100} - 1)] = \$6,408$$

TOTAL Costs (O&M and Capital Replacement):

- Equivalent Annual Costs

$$A = \$12,113 + \$6,408 = \mathbf{\$18,500}$$

EXHIBIT C-2 **8" PVC C900 Pipe - Equivalent Annual Payments**

O&M Costs:

➤ 70 year O&M Present Worth by applying an annual 1.8% inflation at 3% interest.

Year	O&M	1.8% Inflation	O&M Future Worth		O&M Present Worth (3% Interest)
1	\$4,570.00	\$82.26	\$4,652.26		\$4,516.76
2	\$4,652.26	\$83.74	\$4,736.00		\$4,464.13
3	\$4,736.00	\$85.25	\$4,821.25		\$4,412.13
4	\$4,821.25	\$86.78	\$4,908.03		\$4,360.72
5	\$4,908.03	\$88.34	\$4,996.38		\$4,309.92
6	\$4,996.38	\$89.93	\$5,086.31		\$4,259.70
7	\$5,086.31	\$91.55	\$5,177.86		\$4,210.08
8	\$5,177.86	\$93.20	\$5,271.07		\$4,161.03
9	\$5,271.07	\$94.88	\$5,365.94		\$4,112.55
10	\$5,365.94	\$96.59	\$5,462.53		\$4,064.64
11	\$5,462.53	\$98.33	\$5,560.86		\$4,017.28
12	\$5,560.86	\$100.10	\$5,660.95		\$3,970.48
13	\$5,660.95	\$101.90	\$5,762.85		\$3,924.22
14	\$5,762.85	\$103.73	\$5,866.58		\$3,878.50
15	\$5,866.58	\$105.60	\$5,972.18		\$3,833.31
16	\$5,972.18	\$107.50	\$6,079.68		\$3,788.65
17	\$6,079.68	\$109.43	\$6,189.11		\$3,744.52
18	\$6,189.11	\$111.40	\$6,300.52		\$3,700.89
19	\$6,300.52	\$113.41	\$6,413.93		\$3,657.77
20	\$6,413.93	\$115.45	\$6,529.38		\$3,615.16
21	\$6,529.38	\$117.53	\$6,646.91		\$3,573.04
22	\$6,646.91	\$119.64	\$6,766.55		\$3,531.41
23	\$6,766.55	\$121.80	\$6,888.35		\$3,490.27
24	\$6,888.35	\$123.99	\$7,012.34		\$3,449.61
25	\$7,012.34	\$126.22	\$7,138.56		\$3,409.42
26	\$7,138.56	\$128.49	\$7,267.05		\$3,369.69
27	\$7,267.05	\$130.81	\$7,397.86		\$3,330.44
28	\$7,397.86	\$133.16	\$7,531.02		\$3,291.64
29	\$7,531.02	\$135.56	\$7,666.58		\$3,253.29
30	\$7,666.58	\$138.00	\$7,804.58		\$3,215.38
31	\$7,804.58	\$140.48	\$7,945.06		\$3,177.92
32	\$7,945.06	\$143.01	\$8,088.07		\$3,140.90
33	\$8,088.07	\$145.59	\$8,233.66		\$3,104.31
34	\$8,233.66	\$148.21	\$8,381.86		\$3,068.14
35	\$8,381.86	\$150.87	\$8,532.74		\$3,032.39
36	\$8,532.74	\$153.59	\$8,686.33		\$2,997.06
37	\$8,686.33	\$156.35	\$8,842.68		\$2,962.15
38	\$8,842.68	\$159.17	\$9,001.85		\$2,927.64
39	\$9,001.85	\$162.03	\$9,163.88		\$2,893.53
40	\$9,163.88	\$164.95	\$9,328.83		\$2,859.82
41	\$9,328.83	\$167.92	\$9,496.75		\$2,826.50
42	\$9,496.75	\$170.94	\$9,667.69		\$2,793.57
43	\$9,667.69	\$174.02	\$9,841.71		\$2,761.02
44	\$9,841.71	\$177.15	\$10,018.86		\$2,728.86

Year	O&M	1.8% Inflation	O&M Future Worth	O&M Present Worth (3% interest)
45	\$10,018.86	\$180.34	\$10,199.20	\$2,697.06
46	\$10,199.20	\$183.59	\$10,382.79	\$2,665.64
47	\$10,382.79	\$186.89	\$10,569.68	\$2,634.58
48	\$10,569.68	\$190.25	\$10,759.93	\$2,603.89
49	\$10,759.93	\$193.68	\$10,953.61	\$2,573.55
50	\$10,953.61	\$197.17	\$11,150.78	\$2,543.57
51	\$11,150.78	\$200.71	\$11,351.49	\$2,513.94
52	\$11,351.49	\$204.33	\$11,555.82	\$2,484.65
53	\$11,555.82	\$208.00	\$11,763.82	\$2,455.70
54	\$11,763.82	\$211.75	\$11,975.57	\$2,427.09
55	\$11,975.57	\$215.56	\$12,191.13	\$2,398.81
56	\$12,191.13	\$219.44	\$12,410.57	\$2,370.87
57	\$12,410.57	\$223.39	\$12,633.96	\$2,343.25
58	\$12,633.96	\$227.41	\$12,861.37	\$2,315.95
59	\$12,861.37	\$231.50	\$13,092.88	\$2,288.96
60	\$13,092.88	\$235.67	\$13,328.55	\$2,262.30
61	\$13,328.55	\$239.91	\$13,568.46	\$2,235.94
62	\$13,568.46	\$244.23	\$13,812.70	\$2,209.89
63	\$13,812.70	\$248.63	\$14,061.32	\$2,184.14
64	\$14,061.32	\$253.10	\$14,314.43	\$2,158.70
65	\$14,314.43	\$257.66	\$14,572.09	\$2,133.55
66	\$14,572.09	\$262.30	\$14,834.39	\$2,108.69
67	\$14,834.39	\$267.02	\$15,101.40	\$2,084.12
68	\$15,101.40	\$271.83	\$15,373.23	\$2,059.84
69	\$15,373.23	\$276.72	\$15,649.95	\$2,035.84
70	\$15,649.95	\$281.70	\$15,931.65	\$2,012.12
71	\$15,931.65	\$286.77	\$16,218.42	\$1,988.68
72	\$16,218.42	\$291.93	\$16,510.35	\$1,965.51
73	\$16,510.35	\$297.19	\$16,807.53	\$1,942.61
74	\$16,807.53	\$302.54	\$17,110.07	\$1,919.98
75	\$17,110.07	\$307.98	\$17,418.05	\$1,897.61
76	\$17,418.05	\$313.52	\$17,731.58	\$1,875.51
77	\$17,731.58	\$319.17	\$18,050.74	\$1,853.65
78	\$18,050.74	\$324.91	\$18,375.66	\$1,832.06
79	\$18,375.66	\$330.76	\$18,706.42	\$1,810.71
80	\$18,706.42	\$336.72	\$19,043.13	\$1,789.62
81	\$19,043.13	\$342.78	\$19,385.91	\$1,768.77
82	\$19,385.91	\$348.95	\$19,734.86	\$1,748.16
83	\$19,734.86	\$355.23	\$20,090.08	\$1,727.79
84	\$20,090.08	\$361.62	\$20,451.71	\$1,707.66
85	\$20,451.71	\$368.13	\$20,819.84	\$1,687.77
86	\$20,819.84	\$374.76	\$21,194.59	\$1,668.11
87	\$21,194.59	\$381.50	\$21,576.10	\$1,648.67
88	\$21,576.10	\$388.37	\$21,964.47	\$1,629.46
89	\$21,964.47	\$395.36	\$22,359.83	\$1,610.48
90	\$22,359.83	\$402.48	\$22,762.30	\$1,591.72
91	\$22,762.30	\$409.72	\$23,172.03	\$1,573.17
92	\$23,172.03	\$417.10	\$23,589.12	\$1,554.85
93	\$23,589.12	\$424.60	\$24,013.73	\$1,536.73
94	\$24,013.73	\$432.25	\$24,445.97	\$1,518.83
95	\$24,445.97	\$440.03	\$24,886.00	\$1,501.13
96	\$24,886.00	\$447.95	\$25,333.95	\$1,483.64

Year	O&M	1.8% Inflation	O&M Future Worth		O&M Present Worth (3% interest)
97	\$25,333.95	\$456.01	\$25,789.96		\$1,466.36
98	\$25,789.96	\$464.22	\$26,254.18		\$1,449.27
99	\$26,254.18	\$472.58	\$26,726.75		\$1,432.39
100	\$26,726.75	\$481.08	\$27,207.84		\$1,415.70
					\$267,589.70

$P = \text{O\&M carried forward } (1+i)^n$ so, after applying for each of the 100 years
 $P = \$267,590$

- Calculated Annual Cost by applying 3% to 100 year O&M Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$267,590 [(0.03 (1+0.03)^{100}) / ((1+0.03)^{100} - 1)] = \$8,479$$

Capital Replacement Costs:

- **For 1st 70 years**

- 70 year Future Worth by applying 1.8% inflation to \$457,561

$$F = P (1+i)^n = \$457,561 (1+0.018)^{70} = \$1,595,120$$

- Present Worth by applying 3% inflation to Future Worth

$$P = F (1+i)^{-n} = \$1,595,120 (1+0.03)^{-70} = \$201,459$$

- Annual Cost by applying 3% to Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$201,459 [(0.03 (1+0.03)^{70}) / ((1+0.03)^{70} - 1)] = \$6,917$$

- **For 2nd 70 years**

- 140 year Future Worth by applying 1.8% inflation to \$457,561

$$F = P (1+i)^n = \$457,561 (1+0.018)^{140} = \$5,560,808$$

- Present Worth by applying 3% inflation to Future Worth

$$P = F (1+i)^{-n} = \$5,560,808 (1+0.03)^{-140} = \$88,701$$

- Annual Cost by applying 3% to Present Worth

$$A = P [(i (1+i)^n) / ((1+i)^n - 1)] = \$88,701 [(0.03 (1+0.03)^{140}) / ((1+0.03)^{140} - 1)] = \$2,704$$

- **Total Capital Replacement Costs**

- Annual Cost

$$A = \$6,917 + \$2,704 = \$9,621$$

TOTAL Costs (O&M and Capital Replacement):

➤ Equivalent Annual Costs

$$A = \$8,479 + \$9,621 = \mathbf{\$18,100}$$

Exhibit D
Encroachment Permit Agreement for Segment B

Control No.

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, Ca 95035

Record without fee under Section
6103-Government Code, State of
California

Encroachment Permit Agreement Upon
Public Right of Way

This authorization ("Permit") is entered into between The City of Milpitas, a municipal corporation ("the City") and Spring Valley Heights Homeowner's Association____ ("Permittee").

RECITALS

- A. Permittee has requested permission from the City to enter upon, utilize, construct improvements within and adjacent to certain right of way, described as follows ("Encroachment Area"): to install a water system within portion of Downing Road and Calaveras Road (Segment B as shown on Exhibit B of Agreement for the provisions of City potable water service).
- B. Permittee's utilization of the Encroachment Area will be undertaken for the benefit of the Permittee as shown on Exhibit A of the Agreement for the Provisions of City Potable Water Service (Agreement). The pipeline alignment is shown in Exhibit B of said agreement.
- C. Permittee desires to enter upon the Encroachment Area in order to construct and install those improvements ("the Improvements") described as follows: water system improvements on Downing Road and Calaveras Road (Segment B as shown on Exhibit B of Agreement).
- D. The purpose of this Permit is to document the City's authorization of such Encroachment and describe the terms and conditions governing such Encroachment.

The parties therefore agree as follows:

1. City's Title: By acceptance of the benefits hereunder, Permittee acknowledges the City's title to and interest in the real property of which the Encroachment Area is a part and waives any right to contest the validity of such title or interest.
2. Existing Utilities: Installation of the improvements shall not interfere with existing utilities within the Encroachment Area. If such interference is unavoidable, Permittee will be solely responsible for obtaining permission from the providers of such utilities, coordinating its construction activities with such utility providers and satisfaction of any expenses resulting from such interference.
3. Maintenance, Removal or Relocation of Improvements: Permittee acknowledges that the Encroachment Area is or may be the site of future public improvements in that all rights of use as described herein may be terminated upon 90 days prior notice of termination by the City to the Permittee. Upon such termination, Permittee shall, within the time prescribed by the City, remove or relocate all improvements placed, constructed or maintained within the Encroachment Area by Permittee. If Permittee fails to comply with such termination notice within the time prescribed, the City may remove and destroy the improvements without reimbursement to Permittee, its successors and assigns, and the cost of such removal shall be paid by Permittee, its successors and assigns, to the City and shall constitute a debt owing to the city. So long as the permit remains in effect, Permittee shall be solely responsible for maintenance of the improvements.
4. Emergency Repairs. Permittee shall engage the services of a professional engineer to serve in an on-call capacity in the case of any emergency or damage to Permittee improvements. Such engineer shall also serve as the responsible operator and agent for compliance with respect to any Underground Services Alert, as outlined more fully in item 12, below. In the event of an emergency repair of City facilities in proximity to Permittee facilities, which repair may conflict with or threaten Permittee facilities, Permittee shall immediately, upon notice by City, provide a representative to the repair site. Protective measures, as determined by the Permittee representative, at the election of the City, may be undertaken by the City at Permittee's expense. In the event of a rupture, line break, or other disruption of water line operation, which disruption presents an immediate threat to public safety, should permittee representative not be immediately available to coordinate repair and response, City may, at its election, repair the disruption and recover full costs of repair from permittee. Should City not elect to perform such protective action, Permittee shall provide the resources to conduct the protective measures upon City's demand under the direction of the City and in a manner consistent, in the City's sole discretion, with the execution of the City's responsibilities in the emergency. Priority shall be given to activities necessary to restore City services and for public safety.

5. Construction Standards. Construction of the improvements will conform in all respects to the standards and requirements of the City and will be subject to the City's normal inspection and approval procedures.

6. Indemnity/Hold Harmless. Permittee hereby agrees to defend, indemnify and hold harmless the City, its elected and appointed boards, officers, agents and employees, from any liability, claims or damages for personal injury or death as well as for property damage which may arise as a result of this Permit, whether due to acts or omissions of Permittee or any subcontractor, agent, employee or other persons or entities directly or indirectly employed by or acting as agent or under the direction of Permittee. In the event of any such liability, claims or damages, Permittee will defend the City, its agents and employees, with counsel reasonably acceptable to the City. The parties acknowledge that this indemnity provision is a material inducement for the City to grant this authorization and that the City would not grant this authorization without these indemnity provisions.

7. Termination/Revocation. As set in paragraph 3 above, the City may terminate this Permit. Determination by the City Council of the City that Permittee, its successors or assigns, is in default hereunder may be cause for revocation of this permit. By acceptance hereof, Permittee waives any claim, loss, damage action against the City resulting from the termination or revocation of this Permit or removal of the improvements by the City as permitted herein.

8. Attorney's Fees. In the event of legal action between the parties with respect to this authorization, the party prevailing in such action will be entitled, in addition to such other relief as may be granted, to a reasonable sum as its attorney's fees and costs.

9. Compliance with other Conditions. Permittee acknowledges that the authorization contained herein is in addition to and not in lieu of any other permits, inspections or approvals which Permittee may need to obtain from the City, from other utility providers or property owners with respect to its construction of the improvements and that Permittee must comply with all additional conditions imposed by the City with respect to construction of the improvements.

10. Encroachment Authorization. Based upon the terms and provisions in this Agreement, the City hereby authorizes encroachment by Permittee upon the Encroachment Area.

11. Successors and Assigns. This authorization will bind and inure to the benefit of the parties, the respective heirs, successors and assigns. This authorization is intended to run with the benefited property as a covenant running with the land and the obligations of Permittee described herein will constitute continuing obligations of all persons or entities succeeding to Permittee's ownership interest in such benefited property.

12. Underground Service Alert Membership. Permittee shall become a member of the underground service alert and remain an active member for perpetuity of the encroachment. Permittee shall be responsible for all subsurface installations (Underground Services Alert) and shall field mark, at its sole expense, the locations of its underground facilities upon notification in accordance with the requirements of Section 4216 of the State of California Government Code, as it now reads or may hereinafter be amended.

Executed on this _____ day of _____, 200 _____, at Milpitas, California.

PERMITEE:

By: _____
print name:
print title:

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Date: _____ By: _____
Charles Lawson, Interim City Manager

Attest:

Mary Lavelle, City Clerk

Approved as to form:

Steven T. Mattas, City Attorney

Recommended by:

Greg Armendariz, City Engineer

763130-2

ALL PURPOSE ACKNOWLEDGMENT

State of California)
) s.s.
County of _____)

On _____, before me,
_____, personally appeared

_____,
_____ personally known to me;
_____ or proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged to
me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove
invaluable to persons relying on the document.

____ Individual(s)
____ Corporate Officer(s) Titles _____ and _____
____ Partner(s) _____ Limited _____ General
____ Attorney-in-Fact
____ Trustee(s)
____ Guardian/Conservator
____ Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could
prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document _____
Number of pages: _____ Date of document: _____
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

Attachment 4 - LAFCO service area approval.

November 17, 2003

Darryl Wong
455 East Calaveras Blvd.
Milpitas, CA 95035

**Re: Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)
Request for Extension of Water Services**

Dear Mr. Wong:

This is to inform you that the LAFCO Chairperson and Executive Officer have administratively approved your request for extending water services to the above mentioned property located on 550 Vista Ridge Drive. As provided for under the local LAFCO policies for "Out of Agency Contract for Service Requests", the Chair and the Executive Officer may give administrative approvals for requests with an urgent health and safety concern, if the proposal meets certain criteria.

Attached is a staff report describing how the proposal meets the required criteria and how it complies with applicable LAFCO policies. This staff report will be presented to the full LAFCO at its December 10 meeting as an informational item.

You may contact Neelima Palacherla at 408/299-5127 if you have any questions regarding this issue.

Sincerely,



Blanca Alvarado
LAFCO Chairperson



Neelima Palacherla
LAFCO Executive Officer



November 17, 2003

TO: LAFCO

FROM: Neelima Palacherla, Executive Officer *up*

SUBJECT: Administrative Approval for
Out of Agency Contract for Water Services (City of Milpitas)
Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)

FOR YOUR INFORMATION ONLY

The LAFCO Chairperson and Executive Officer administratively approved a request from the City of Milpitas for extending water service to a single family home located at 550 Vista Ridge Drive just outside the city limits of Milpitas, without waiting for the full Commission approval.

As a Responsible Agency under CEQA, found that the extension of services to the property with an existing single family home is categorically exempt from CEQA under Section 15301(b).

PROJECT DESCRIPTION

The City of Milpitas requested LAFCO administrative approval to provide water services to the property (APN 042-31-002) located at 550 Vista Ridge Drive, located outside Milpitas' city limits and urban service area but within its sphere of influence. This parcel is part of the 27 lot Spring Valley Heights residential development. Except for this parcel which is located on unincorporated land, the remaining parcels in the development are located within city limits. Please see attached map. The Spring Valley Mutual Water Company using wells provided the development's water supply. The wells have recently failed and the community is now trucking water for its needs. The City on behalf of the property owner is seeking LAFCO administrative approval to connect the property to the City water supply stating that an immediate public health danger is created since the property does not have an adequate water supply.

ENVIRONMENTAL ASSESSMENT

Categorically exempt per section 15301(b).

CONSISTENCY WITH LAFCO POLICIES

Criteria for Administrative Approvals

The proposal meets the criteria for requesting an administrative approval for the following reasons. The property is currently developed with a single-family residence. According to the application, the development has experienced severe potable water shortages for more than a year. Several wells used by the Water Company are no longer productive and have had to be abandoned. The original water system and well were constructed in 1978. When it went dry, a second well was constructed in 1997 to replace it. This well went dry too and was replaced by a third well in 2000. In 2002, when it was reported that the third well was dry, drilling of a fourth well was started. In December 2002, the City was informed that the fourth well would only provide temporary relief and was not adequate for the needs of the community. Currently, water is being trucked in from the City's water system to meet the community's needs. The community has since sought permanent connection to the City's water system. Attached is a letter from the Department of Health Services dated September 26, 2003, stating that the situation constitutes a critical health concern. Also attached, is the resolution from the City of Milpitas stating that an urgent health and safety concern exists, which requires immediate action.

Project Within Sphere of Influence (SOI)

The proposal is within the SOI of Milpitas. Local LAFCO policies state that proposals for extending services outside an agency's SOI will not be considered.

Annexation as Alternative to Service Extension

Annexation of this parcel to the City is not anticipated at this time. Although the property is contiguous to the City boundary, it is not within the City's urban service area (USA) or the urban growth boundary (UGB). Annexation of this property will require an USA amendment first.

Health and Safety/Public Benefit Issues

The property developed with a single-family home does not have a potable water supply source. The lack of an adequate supply of potable water constitutes a public health hazard as indicated in the letter from the Department of Health Services specialist. There appears to be no other water supply source for the property as wells drilled in the area have consistently failed over time.

Growth Inducing Impacts

The proposal does not directly induce growth as there is already an existing single family home on the property and there is no possibility of future subdivision of the parcel. The agreement or contract for providing water services is limited to this property outside the city limits. The other parcels seeking city water are currently within Milpitas's city limits. The City has ordinances that restrict the extension of City services beyond the UGB. However, this proposal meets the City criteria.

Premature Conversion of Agricultural or Open Space Land

The subject property is currently developed with a single family home. Extending services to this property will not constitute premature conversion of agricultural or open space land. No agricultural or open space lands would be impacted by the service extension.

Ability of City to Provide Service

The City is able to provide water service to this parcel without adversely affecting service provision to its current customers.

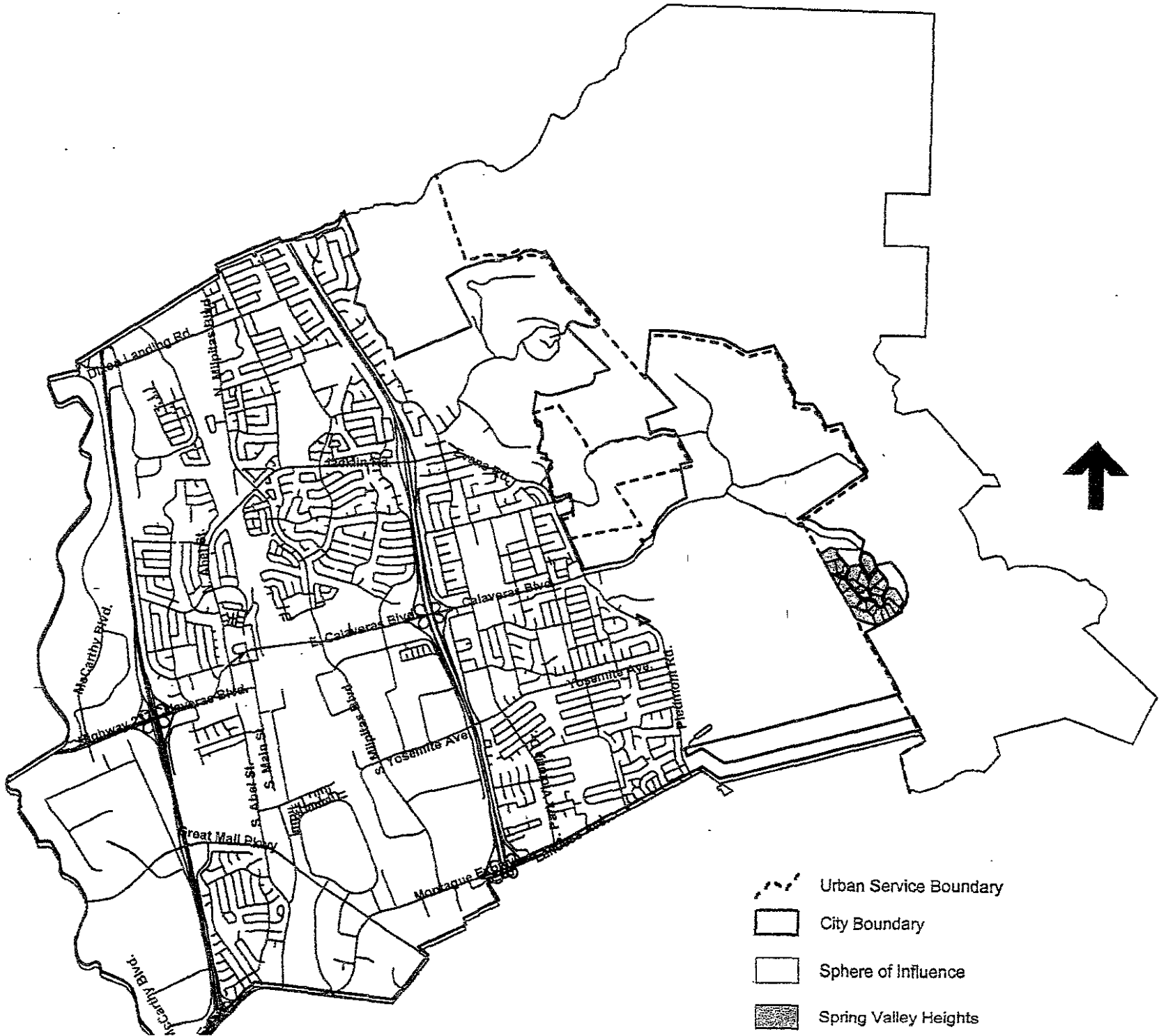
CONCLUSION

Extending water service to the single-family home outside Milpitas's city limits would alleviate an existing and immediate health and safety concern. No other feasible options for service seem to be available to the site. Annexation is also not a feasible alternative. There would be no direct growth inducing impacts or adverse impacts to agricultural or open space lands as a result of the service extension.

ATTACHMENTS

1. Map showing property and surrounding boundaries
2. Letter dated September 26, 2003 from the Department of Health Services
3. City of Milpitas Resolution Requesting LAFCO Administrative Approval
4. Agreement for Potable Water Services to Spring Valley Heights Community. Approved by Milpitas City Council on October 7, 2003; to be signed after approval from SFPUC.
5. Administrative Approval Letter to City of Milpitas

Figure 1



State of California—Health and Human Services Agency
Department of Health Services



DIANA M. BONTÁ, R.N., Dr. P.H.
 Director

RECEIVED

SEP 29 2003



GRAY DAVIS
 Governor

September 26, 2003

Mr. Darryl Wong
 Utility Engineer
 City of Milpitas
 455 East Calaveras Blvd
 Milpitas, CA 95035-5479

Dear Mr. Wong:

**EMERGENCY CONSTRUCTION OF POTABLE WATER SUPPLY PIPELINE TO SPRING
 VALLEY HEIGHTS SUBDIVISION
 City of Milpitas, System No. 4310005**

This letter is to certify that Spring Valley Heights Mutual Water Company has been experiencing severe potable water shortage problems for more than a year. Several wells used by the water system no longer produce any water and have had to be abandoned. The one existing well has had to meet the water system's entire needs, requiring significant water conservation measures on the part of the homeowners. The problem has recently been compounded due to the well's production dropping off significantly; reportedly producing only 8-10 gallons per minute. The water system has been forced into hauling water from the City of Milpitas' (City) water system by truck to meet its water supply needs.

Hauling water should be done only when the circumstances require it and only as an interim, emergency measure due to the varied ways of contaminating the hauled water. However, the alternative of running out of water should be avoided at all costs. A water outage situation places the water system users at great risk to illness. When a water outage occurs, it usually requires that a boil water notice be issued to properly notify the users of the acute health risk they may encounter due to the questionable water quality.

The Department is deeply concerned when a water system has a continuing water supply shortage issue with a potential for a water outage. It represents a critical health concern. Spring Valley Heights is currently experiencing this type of situation.

The Department supports the City of Milpitas' efforts to provide a consistent and reliable water supply to the Spring Valley Heights subdivision by constructing a pipeline from the City's existing pipe network to Spring Valley Heights. The Department also supports the consolidation of Spring Valley Heights into the City's domestic water supply service area. In this manner, Spring Valley Heights would no longer exist as a public water system. If Spring Valley Heights chooses to pursue the former, please note that the Department cannot issue a permit to Spring Valley Heights if it is an unincorporated association organized under Title 3 (commencing with



Do your part to help California save energy. To learn more about saving energy, visit the following web site:
www.consumerenergycenter.org/flex/index.html

• Drinking Water Field Operations Branch, 2151 Berkeley Way, Room 458, Berkeley, CA 94704-1011
 (510) 540-2158 FAX (510) 540-2152

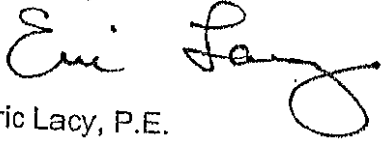
DHS Internet Address: www.dhs.ca.gov Program Internet Address: www.dhs.ca.gov/ps/ddwem

Mr. Darryl Wong
Page 2
September 26, 2003

Section 20000) of Division 3 of the Corporations Code. (See Section 116540(b), Article 7, Health & Safety Code.)

If you have further questions regarding this letter, please contact me at (510) 540-2413.

Sincerely,



Eric Lacy, P.E.
District Engineer
Santa Clara District
Drinking Water Field Operations Branch
Department of Health Services

cc: Santa Clara County Environmental Health Department

Mr. Ed Kandefer, President
Spring Valley Heights Mutual Water Company
514 Vista Spring Court
Milpitas, CA 95035

RESOLUTION NO. 7350

A RESOLUTION OF THE CITY OF MILPITAS REQUESTING APPROVAL OF A WATER SERVICE AGREEMENT WITH SPRING VALLEY HEIGHTS HOMEOWNERS ASSOCIATION BY THE SANTA CLARA COUNTY LOCAL AGENCY FORMATION COMMISSION

WHEREAS, The Spring Valley Heights Mutual Water Company (SPVH-MWC) provides drinking water to the Spring Valley Heights subdivision, which is located primarily within the City of Milpitas but outside the City-established Urban Growth Boundary; and

WHEREAS, SPVH-MWC is experiencing a water supply shortage due to diminished well capacities that has critically impaired the system's ability to provide sufficient supply to meet the community's sanitary and fire safety needs; and

WHEREAS, SPVH-MWC requested temporary emergency water supply from the City of Milpitas; and

WHEREAS, SPVH-MWC has submitted a statement from an independent licensed professional engineer that an emergency due to water shortage exists and connection to City water is the only economically justifiable solution; and

WHEREAS, the voters of the City of Milpitas by approving Ordinance No. 38-742 enacted an Urban Growth Boundary in 1998, which generally restricts the provision of City services outside of the Urban Growth Boundary; and

WHEREAS, the City Council of Milpitas has previously determined that emergency water supply is needed, and has granted emergency water supply from the City water system; and

WHEREAS, Spring Valley Heights Homeowners Association (Association) has requested permanent connection to the City's water system for which City needs approval from the Santa Clara County Local Agency Formation Commission (LAFCO) as one of the homes is located in the county.

WHEREAS, the Association is willing to assume private water distribution system duties and disband the SPVH-MWC upon approval by San Francisco Public Utility Commission (SFPUC) in order to meet Raker Act requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILPITAS THAT:

1. The City Council hereby finds that:

- (a) The lack of a potable water supply source constitutes an immediate health and safety concern.
- (b) The property to which service is being requested is currently developed.
- (c) There are physical restrictions to the property that prohibit a conventional service delivery method typically suited to unincorporated area.

- (d) An agreement with Association as shown in Attachment A can be considered for adoption contingent upon approval of SFPUC water supply to the Spring Valley Heights community by SFPUC.

2. Staff is hereby authorized to submit the following documents to LAFCO:

- (a) Council Resolution requesting LAFCO administrative approval.
- (b) Letter from State Department of Health Services stating that a health and safety concern exists.
- (c) The terms of the agreement with Association contingent upon approval of service by SFPUC.

3. The City Council hereby requests that LAFCO Executive Officer and ChairPerson grant administrative approval in support of this request.

PASSED AND ADOPTED this 7th day of October, 2003, by the following vote:

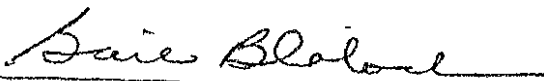
AYES: (5) Mayor Esteves and Councilmembers Dixon, Gomez, Livengood, and Polanski

NOES: (0) None

ABSENT: (0) None

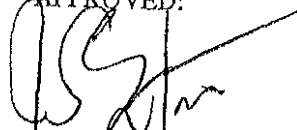
ABSTAIN: (0) None

ATTEST:




Gail Blalock, City Clerk

APPROVED:


Jose S. Esteves, Mayor

APPROVED AS TO FORM



Steven T. Mattas, City Attorney

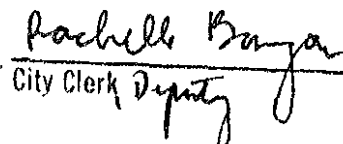
I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
COPY OF RESOLUTION No. 7350

ON FILE IN THIS OFFICE.

ATTEST:

16 OCT 2003

Date


City Clerk Deputy

Control No. _____

Recording requested by:

City of Milpitas

When recorded mail to:

City of Milpitas

City Engineer's Office

455 E. Calaveras Blvd.

Milpitas, CA 95035

**AGREEMENT FOR THE PROVISION OF CITY POTABLE WATER SERVICE
(INCLUDING PROPERTY LOCATED OUTSIDE THE CITY LIMITS)**

THIS AGREEMENT, made and entered into this _____ day of _____, 20__, by and between the City of Milpitas, a municipal corporation, hereinafter referred to as "CITY," and Spring Valley Heights Homeowners Association, hereinafter referred to as "ASSOCIATION."

WHEREAS, ASSOCIATION is a homeowners' association made up of the owners of the 25 lots in the Spring Valley Heights subdivision, which owners are referred to herein as "the Members."

WHEREAS, the 25 lots of the Spring Valley Heights Subdivision plus one additional lot together make up the Spring Valley Heights Community (Community).

WHEREAS, the existing private water system that serves the Spring Valley Heights Community is operated by the Spring Valley Heights Mutual Water Company ("the Company").

WHEREAS, one lot in the Community is outside the Milpitas city limits, and therefore Local Agency Formation Commission ("LAFCO") approval is required in order for the City to provide service outside of its boundaries; and

WHEREAS, the Company's existing groundwater supply has diminished and is now inadequate to provide for health and safety needs of the ASSOCIATION; and

WHEREAS, the Company is receiving temporary emergency water supply from the CITY'S municipal water supply for the Spring Valley Heights Subdivision; and

WHEREAS, the State of California Department of Health Services has evaluated the Company's existing groundwater supply and instructed the Company to develop a new water source or supply; and

WHEREAS, the Company developed a new well and determined that it was of inadequate quantity and quality for potable water purposes; and

WHEREAS, ASSOCIATION desires a permanent connection to the CITY'S municipal water supply to serve the Community; and

WHEREAS, CITY finds that adequate utility capacity exists to provide such service within its San Francisco Public Utility Commission water supply service area; and

WHEREAS, the San Francisco Public Utility Commission has approved use of this water contingent upon ASSOCIATION, rather than the Company, supplying water to the lots within the Spring Valley Heights subdivision in order to comply with the provisions in the Raker Act, which prohibit supplying water to private companies for resale; and

WHEREAS, ASSOCIATION is willing to design and construct a permanent water connection to the CITY'S municipal water supply in accordance with CITY standards at its own cost and to provide retail water service to the Members through a master meter.

NOW, THEREFORE, in consideration of the promises herein and for further good and valuable consideration hereinafter set forth, IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

SECTION 1. Subject Property. The properties to be served by water supplied to the ASSOCIATION by the City shall be solely those properties described on Exhibit A which is attached hereto and incorporated herein by this reference. The term "Member" as used herein shall refer to the owners of the property described in Exhibit A.

SECTION 2. Conditions for Receipt of Water Service. ASSOCIATION may provide potable water service to the properties described in Exhibit A provided that ASSOCIATION and its members shall comply with all laws, codes, ordinances and policies relating to potable water service within the City of Milpitas ("the Rules"). Upon request by CITY, ASSOCIATION agrees to disconnect or otherwise discontinue providing water service to a Member for the Member's failure to comply with the Rules.

SECTION 3. Construction of Necessary Facilities. ASSOCIATION shall prepare plans and specifications for installation of an extension of the City's existing potable water system that terminates at a master water meter ("the Master Meter") through which water will be provided to the Members, which plans shall be subject to approval of the City. The Water System Extension

may include piping, pumps, pump stations, controls, emergency generators, programmable logic controller, and other necessary appurtenances. ASSOCIATION shall install potable water mains in the public street, in an existing public service easement or in an approved easement from ASSOCIATION's property to the public potable water system connection point, all subject to approval by the City and in accordance with the then-existing CITY standards.

SECTION 4. Costs. The ASSOCIATION shall pay the following costs as set forth below:

A. The ASSOCIATION shall pay all costs to the City associated with the Water System Extension. These costs shall include the City's costs incurred in project coordination, plan check, inspection, and acceptance associated with the Water System Extension. The amount of such costs shall be based upon standard City of Milpitas labor and material rates paid to the City pursuant to City Private job (PJ) cost reimbursement process. The ASSOCIATION has provided a deposit in the amount of \$5,000 on August 1, 2003. If said costs exceed the amount of the deposit, as determined by the City, ASSOCIATION agrees to immediately replenish the deposit in the amount requested by the City Engineer. If the costs do not exceed the amount of the deposit, the City shall refund the remaining deposit amount to the ASSOCIATION.

B. The ASSOCIATION shall pay the City's costs for processing the Out of Agency Request to Santa Clara County Local Agency Formation Commission ("LAFCO") approval. The ASSOCIATION shall in addition pay all LAFCO application and processing fees. These costs may be deducted from the PJ account balance.

C. Upon completion of the physical connection of the public potable water system to the Master Meter and prior to the commencement of water service, the ASSOCIATION shall make a lump-sum payment equal to the City's then-current water connection fee for each structure connecting to the system. Upon the proposed connection of additional structures to the system and prior to the issuance of building permits for said structures, the individual property owners shall pay a fee equal to the amount of the then-current connection fee. The ASSOCIATION acknowledges that the City may withhold issuance of building permits if such connection fees are not paid.

D. The ASSOCIATION shall pay the City's costs of operating and maintaining the Water System Extension (including any necessary pump stations) and Master Meter including labor, pipeline and equipment replacement, and routine material consumed during operation of the system. The City shall determine the costs of operating and maintaining the Water System Extension and provide an invoice for such costs each year by January 31. The ASSOCIATION

shall pay the invoice within 30 days of the date of the invoice. The City will consider alternate means, such as the formation of an assessment district, to assist the ASSOCIATION in financing the construction, operation, and maintenance of the Water System Extension.

E. The ASSOCIATION shall pay to the City water meter and water quantity charges on the City's standard billing cycle based on the water supplied to the Master Meter and as required by the City's then-current water rates, whether adopted by ordinance, resolution, or otherwise.

F. In addition, the ASSOCIATION shall, on request by CITY, reimburse CITY for any other reasonable costs that are a direct or indirect result of the Water System Extension to the extent such costs are not otherwise covered herein.

Unless otherwise set forth herein, all fees and charges described above will be due and payable at the time said fees are usually and customarily collected by CITY under its rules and regulations respecting such fees and charges.

SECTION 5. ASSOCIATION shall be responsible for all acquisition of any necessary right-of-way for the Water System Extension, prepare necessary environmental documents, and construct the Water System Extension in accordance with all laws, codes, ordinances and policies of CITY in effect at the time of construction. The ASSOCIATION shall cause the designer of the Water System Extension to develop and provide to the City prior to the City's acceptance an operation and maintenance manual.

SECTION 6. ASSOCIATION shall dedicate all newly constructed public potable water supply facilities (up to the Master Meter) to CITY, in consideration of permission to connect to City's systems.

SECTION 7. It is understood and agreed that CITY will own and maintain all public potable water facilities (up to the Master Meter) installed by ASSOCIATION that have been inspected and approved by CITY after the system is dedicated to the CITY.

SECTION 8. Further, CITY shall not be liable in any way for damages to ASSOCIATION or ASSOCIATION's property resulting from acts of God or any other act or acts beyond the control of CITY which may in any way cause interruption or discontinuance of the potable water service(s) provided hereunder.

SECTION 9. ASSOCIATION expressly agrees that all maintenance of the potable water distribution system after the Master Meter shall be the responsibility of ASSOCIATION and the Members. ASSOCIATION shall keep the potable water distribution system under its ownership

in good condition and shall promptly repair the same following damage or disrepair in accordance with applicable laws, codes, ordinances, and policies.

SECTION 10. Upon ASSOCIATION's breach of or failure to timely perform any of the terms of this Agreement, this Agreement may be terminated at CITY's sole option, and CITY may discontinue service.

SECTION 11. ASSOCIATION further agrees that its on-site distribution system shall only serve the parcels described in Exhibit "A", and does not extend to any additional subdivision of said property.

SECTION 12. CITY may allow extensions or connections onto this Water System Extension to serve third parties. ASSOCIATION is entitled to apply for reimbursement for capital construction costs in accordance with Milpitas Municipal Code Title VIII, Chapter 1.

SECTION 13. This Agreement shall be binding upon the successors, heirs, or assigns of ASSOCIATION.

SECTION 14. The parties agree that this Agreement for Potable Water Services shall be recorded in the office of the County Recorder of Santa Clara County, California, at ASSOCIATION's cost and expense, and that the provisions contained herein relative to the real property described in Exhibit "A" shall operate as covenants and restrictions thereon.

SECTION 15. This Agreement shall become null and void and without any further force or effect if the extension of services described hereunder are not approved by LAFCO on or before December 31, 2003, unless extended by written mutual agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective the day and year first above written.

Dated: _____, 20__

ASSOCIATION:

Dated: _____, 20__

CITY:

CITY OF MILPITAS, a municipal corporation

By: _____

Jose S. Esteves, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Steve Mattas, City Attorney

Exhibit A Properties governed by this Agreement

APN 42-30-026	3547 Vista Norte Court
APN 42-30-027	2553 Vista Norte Court
APN 42-30-028	3561 Vista Norte Court
APN 42-30-004	3545 Vista Norte Court
APN 42-30-005	3550 Vista Norte Court
APN 42-30-025	350 Vista Ridge Drive
APN 42-30-006	375 Vista Ridge Drive
APN 42-30-029	531 Vista Ridge Drive
APN 42-30-015	529 Vista Ridge Drive
APN 42-30-14	527 Vista Ridge Drive
APN 42-30-013	525 Vista Ridge Drive
APN 42-30-012	523 Vista Ridge Drive
APN 42-30-008	489 Vista Ridge Drive
APN 42-30-011	521 Vista Ridge Drive
APN 42-30-010	519 Vista Ridge Drive
APN 42-30-009	517 Vista Ridge Drive
APN 42-30-007	461 Vista Ridge Drive
APN 42-30-017	510 Vista Spring Court
APN 42-30-018	514 Vista Spring Court
APN 42-30-019	518 Vista Spring Court
APN 42-30-021	500 Vista Spring Court
APN 42-30-024	410 Vista Ridge Drive
APN 42-30-022	490 Vista Ridge Drive
APN 42-30-023	422 Vista Ridge Drive
APN 42-30-020	524 Vista Ridge Drive
APN 42-31-002	548 Vista Ridge Drive and 550 Vista Ridge Drive (COUNTY PARCEL)

November 17, 2003

Darryl Wong
455 East Calaveras Blvd.
Milpitas, CA 95035

Re: Spring Valley Heights, 550 Vista Ridge Drive (APN 042-31-002)
Request for Extension of Water Services

Dear Mr. Wong:

This is to inform you that the LAFCO Chairperson and Executive Officer have administratively approved your request for extending water services to the above mentioned property located on 550 Vista Ridge Drive. As provided for under the local LAFCO policies for "Out of Agency Contract for Service Requests", the Chair and the Executive Officer may give administrative approvals for requests with an urgent health and safety concern, if the proposal meets certain criteria.

Attached is a staff report describing how the proposal meets the required criteria and how it complies with applicable LAFCO policies. This staff report will be presented to the full LAFCO at its December 10 meeting as an informational item.

You may contact Neelima Palacherla at 408/299-5127 if you have any questions regarding this issue.

Sincerely,



Blanca Alvarado
LAFCO Chairperson



Neelima Palacherla
LAFCO Executive Officer